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Volume 10
Pages 2301 - 2437

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE BUREAU OF SECURITIES REGULATIONS

No. C-2011000036

In the Matter of:
Local Government Center, Inc., et al.

BEFORE DONALD E. MITCHELL, ESQUIRE
PRESIDING OFFICER

* * * * *

REPORT OF PROCEEDINGS

May 11, 2012

9:16 a.m.

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New Hampshire State Archives and Genealogical
Public Research Room
71 South Fruit Street
Concord, New Hampshire 03301

Court Reporter: Pamela J. Carle, LCR, RPR, CRR

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I N D E X

1		
2	WITNESS: PETER CURRO	Page
3		
4	DIRECT EXAMINATION	
5	By Mr. Howard	2320
6	CROSS-EXAMINATION	
7	By Mr. Volinsky	2389
8	REDIRECT EXAMINATION	
9	By Mr. Howard	2405
10		
11		
12		
13	EXHIBITS IN EVIDENCE	Page
14	LGC 428	2329
15	LGC 270	2377
16	BSR 18	2396
17		
18		
19		
20		
21		
22		
23		

1 THE PRESIDING OFFICER: Good morning,
2 ladies and gentlemen. This is day ten in these
3 proceedings, and perceived to be the last day of
4 evidence in these proceedings.

5 Before we have our first witness today,
6 I've been informed that the LGC counsel would like
7 to make a motion at this time in these
8 proceedings. Mr. Ramsdell.

9 MR. RAMSDELL: Thank you, Mr. Mitchell.
10 Mr. Mitchell, at this point on behalf of the Local
11 Government Center, we regret to inform you that we
12 believe we need to make a motion for you to recuse
13 yourself from the proceedings.

14 We believe that information we found
15 out yesterday, and even this morning, has rendered
16 it that the system itself does not provide,
17 consistent with the New Hampshire constitution,
18 for the Local Government Center to have its case
19 decided by a trier of fact who is as impartial as
20 the lot of humanity would allow.

21 It is the structure of the system
22 itself, Mr. Mitchell. First, under RSA 421B 26 A,
23 Roman numeral 11, you may withdraw from the

1 proceedings at any stage of the proceedings, so
2 there is statutory basis for you to recuse
3 yourself at this time.

4 We've provided you and opposing
5 counsel, the bureau, with a copy of the case from
6 the state of California, Haas versus the County of
7 San Bernardino, which discusses the issue in more
8 detail than many cases do. We'll also provide a
9 supplementary brief to you on the issue, but we
10 wanted to raise the issue at the earliest possible
11 time.

12 It is now -- while early on in this
13 matter we had inquired about the contract for the
14 presiding officer into this case and were informed
15 that it was a flat fee contract. It is now our
16 understanding that at some point that changed,
17 and, in fact, the presiding officer is being paid
18 on a biweekly basis, and that, in fact, with the
19 case now expected to go -- or at least some of the
20 motions and a motion for a reconsideration that
21 either side is in all likelihood going to -- going
22 to file past the 1st of June, there will be
23 further negotiation going on regarding an

1 extension of the contract, because the current
2 contract ends May 31st.

3 The law is that that it is an
4 unconstitutional violation of due process under
5 the Federal Constitution, and we believe under the
6 New Hampshire Constitution Part 1, Article 15, for
7 the structure of this proceeding for the presiding
8 officer to be paid on a continuing basis based on
9 the duration of the process itself.

10 The case that we've provided to you,
11 and what we will supplemental -- subsequently
12 provide to you as well, makes clear that if a
13 judge or an administrative hearings officer is
14 paid either on the basis of the duration of the
15 proceeding or, even if that were not the case, but
16 a temporary ad hoc appointment for a particular
17 matter if that presiding officer's future
18 compensation may be affected by the good will of
19 the government, here the Secretary of State, in
20 appointing you again to serve in a matter in which
21 the bureau or another state agency is involved, it
22 is a violation of due process.

23 It now is our understanding that you're

1 being paid on the basis of the duration of this
2 hearing, and while that may not at first blush
3 appear, well, what is the issue, the issue is
4 perhaps the most glaring example is that we filed
5 dispositive motions a while ago. Had those
6 dispositive motions been granted, the case would
7 have been over.

8 But when the dispositive motions are
9 denied, the case then proceeds for a month, six
10 weeks, eight weeks, motions for reconsideration.
11 If there's hearings that are necessary on that,
12 that, in fact, the presiding officer's
13 compensation is directly dependent on the duration
14 of this matter.

15 And, again, even if that were not the
16 case, the system here -- and you didn't create the
17 structure, but it is the structure that is imposed
18 into this matter by the Secretary of State, and it
19 is a violation of the Local Government Center and
20 the other respondents' rights to due process, and
21 so we're asking -- moving for you to recuse
22 yourself at this point.

23 THE PRESIDING OFFICER: Mr. Volinsky.

1 now complain causes a need for a recusal was set
2 specifically at Mr. Quirk's request for a June 4th
3 merits briefing schedule. And I suggest to you,
4 and it is my motion, that when we conclude
5 evidence today that you give all parties five days
6 to submit full trial briefs on all relevant issues
7 without replies so that you will have this matter
8 for decision five days from now. You may then
9 conclude your deliberations within May.

10 It is not your decision or within your
11 control if anyone files motions to reconsider
12 after May. If that's the case, we will deal with
13 it after May. But there is no reason in the world
14 why we have to go back through this process
15 because these proceedings stagger into June to
16 accommodate requests first by Mr. Saturley, and
17 second by Mr. Quirk.

18 So I object to the motion. I have not
19 read the case of Haas versus County of
20 San Bernardino because I've now had it for seven
21 minutes and was trying to listen to Mr. Ramsdell's
22 arguments, and, second, I move that you change the
23 briefing schedule so that we do not take this

1 proceeding into June. Thank you.

2 MR. WINGATE. If I may?

3 MR. VOLINSKY: No.

4 THE PRESIDING OFFICER: I'm sorry,
5 Mr. Wingate, you may not. But, Mr. Ramsdell, I'll
6 hear from you.

7 MR. RAMSDELL: Thank you. The schedule
8 of this case and the hearing date being set for
9 April 30th was requested at a time when
10 respondents believed and were of the understanding
11 that it didn't make any difference to the
12 presiding officer's compensation when the hearing
13 took place.

14 At that time, the respondents were of
15 the understanding that the presiding officer had
16 this case on a flat fee basis. It was only
17 recently that we learned that was not the case.

18 Expediting the briefing schedule into
19 this case won't make any difference whatsoever.
20 It happens to be that June 4 will require a
21 renegotiation, or at least an extension of the
22 existing contract, as respondents understand it,
23 but the damage is done now, not June 4, not June

1 30, the damage is done now.

2 At the point in time where the system
3 required the presiding officer to be paid on the
4 basis of the duration of this proceeding is when
5 the due process violation occurred.

6 And so while it sounds nice and it
7 sounds clever to say, oh, well, we'll fix this,
8 we'll just get everything done before June 4 so
9 there's no renegotiation, the due process
10 violation occurred some time ago.

11 For example, my recollection is that
12 the hearing on the dispositive motions happened
13 more than a month ago. The order on the
14 dispositive motions came out at least a month ago
15 as well, and so it's not today what do we do to
16 fix this so that we're not making the matter
17 worse, and how could we make it look better, it's
18 not about appearances, it's about due process, the
19 violation occurred with the contract structure.
20 Respondents didn't know about it; in fact, we were
21 under a different impression when we asked for
22 this schedule.

23 THE PRESIDING OFFICER: Anything

1 further, Mr. Volinsky?

2 MR. VOLINSKY: No.

3 THE PRESIDING OFFICER: I guess, for
4 the record, I'll respond just briefly, and it will
5 be just briefly.

6 The conditions, if you will, of my
7 employment, as I understand, as I am paid twice a
8 month, and that's a -- each check is the same with
9 a deviation for mileage, and -- and when I say
10 mileage, I saw some signs of recognition out
11 there.

12 Let me bring you back to our very first
13 session when Mr. Saturley, in essence, began these
14 hearings, now I can see with a similar bookend, of
15 could I explain or reveal, demonstrate or
16 otherwise state who I was. And I did so, and he
17 inquired as to how I was being paid.

18 And at that time I indicated that --
19 that it was -- I was being paid on a flat basis,
20 and that -- that I was being paid, I believe, I
21 think it expired at December 31st, and you were
22 all informed of that.

23 Subsequent to that, as we met, I -- and

1 let me say why I did that -- I thought that this
2 was a matter that could reasonably be settled.
3 That is to say, that all of the -- what has
4 transpired since January 1st, that that would have
5 become unnecessary.

6 I certainly learned after the fact, and
7 I will represent to you that when the Secretary of
8 State spoke with me, he offered me a contract of
9 whatever -- I think he said six months, and I
10 believe my response to him was, Mr. Secretary, why
11 don't we do this in increments, because I think I
12 can, you know, maybe talk with these parties and
13 make some assessment.

14 Again, that became impossible; it's not
15 within my control to do so. I inform -- my
16 representation will be that I informed counsel
17 that, well, my contract had been extended, and I
18 believe I shared the specific date -- I'm certain
19 I shared the specific date of May 31st. Yes.

20 Beyond stating, you know, what may be
21 the obvious, which is I'm not a person of
22 significant wealth, and when the Secretary asked
23 if I could do it for free, I informed him that I

1 couldn't do it for free, and we came to that
2 contract.

3 I don't know what happened after that.
4 That is, I don't know -- a request had been made
5 for a copy of my contract, I don't know if it was
6 ever fulfilled, all I know is what I represented
7 to the gentlemen in this room who represented the
8 clients at this time.

9 And I acknowledge, Mr. Volinsky, that
10 you were not here, I believe, on October 4th when
11 the very first session took place in room 411 in
12 the State House annex. So I suppose that's as to
13 knowledge.

14 As to renegotiation, I suppose if you
15 wanted to characterize, Mr. Secretary, this is
16 going to go longer now than -- than May 31st, and
17 so I think we have to extend my contract a month
18 to June or whatever, and I believe it was
19 yesterday -- well, there had been some indication
20 of setting the schedule, if you will, and -- of
21 briefs and -- and a recognition, if you will,
22 of -- of what it would take to come to a decision
23 in this matter, and by that I mean the 2,264 pages

1 of transcript to date, and estimated number of
2 exhibits, which are some -- just over 500, that
3 certainly it would take time to do that.

4 As to the scheduling conferences and
5 orders, I think a fair review of those orders
6 would -- would show that -- that I was trying to
7 keep the pace, and -- and the -- and the
8 extensions and offers and initiations of dates and
9 points that came to me were to extend things out.

10 There's a lot of things that, you know,
11 can't be known with certainty, we've certainly
12 learned that in this case, but I will -- I will
13 say that I don't know that due process is affected
14 by what the terms of my contract are with the
15 terms being known.

16 I can assure counsel and their clients,
17 that, you know, if it -- if it were an effort, you
18 know, to schnooker at the end, I am unmoved by
19 such things, and if -- if I thought I couldn't not
20 render an impartial decision at this point, I
21 would withdraw.

22 If there was any point in these
23 hearings that I thought that I could not render an

1 impartial proceeding and that I was proceeding in
2 a manner that was not violative, I would have -- I
3 would have taken that on my own.

4 I don't know that I have to say more
5 other than I understand your argument, and I
6 haven't read this California case that was
7 presented to me this morning, but with one witness
8 left to go, I will not recuse myself, and we'll
9 proceed with our next witness unless there's
10 additional motions.

11 I'm not going to argue with you,
12 Mr. Ramsdell, do you have an additional motion?

13 MR. RAMSDELL: I don't have an
14 additional motion.

15 THE PRESIDING OFFICER: Are you calling
16 a witness?

17 MR. RAMSDELL: I am not calling a
18 witness. I would like to respond to your comments
19 on the motion that is before you.

20 THE PRESIDING OFFICER: I've just ruled
21 that I'm not going to argue with you, sir. That's
22 not how these proceedings are conducted, and you
23 know that. Okay?

1 MR. RAMSDELL: So you're not going to
2 let me say anything more on this issue, is that
3 what you're saying.

4 THE PRESIDING OFFICER: Mr. Volinsky
5 has passed, you have nothing to react to there.
6 I'm the hearing officer, I've have made the
7 ruling. And I am well aware that you would like
8 me to say something to you and accept your
9 representation, but, sir, I don't accept your
10 representation.

11 So if we can proceed with the
12 proceedings, I'd like to do that, because I think
13 the interest of the state of New Hampshire and its
14 citizens are served by that, and, you know, I get
15 to say that because I'm the hearing officer --

16 MR. RAMSDELL: We understand.

17 THE PRESIDING OFFICER: -- you know,
18 and I've tried to call everything a ball and a
19 strike as I see them. And I understand this is
20 nothing personal, we all have roles, and you all
21 know in what light I see you and your clients from
22 this -- oh, I guess six or eight months of
23 proceedings to date.

1 So I think, Mr. Howard, I don't want
2 you to have to wait any longer. I've made my
3 ruling. If you wish to respond to Mr. Volinsky,
4 you may, but I'd rather get on, finish the facts
5 of this case. So I leave it to you, sir,
6 Mr. Howard.

7 MR. HOWARD: At this point it's our
8 intention to call Mr. Curro.

9 THE PRESIDING OFFICER: Thank you.
10 Mr. Curro, would you please come forward. I need
11 you to remain standing there, sir, just for a
12 moment.

13 (PETER CURRO, Sworn.)

14 THE PRESIDING OFFICER: Please be
15 seated, sir. And we've been using business
16 addresses, so if you would state your name and
17 provide your business address to the stenographer,
18 please.

19 THE WITNESS: Sure. My name is Peter
20 Curro. I work for the Londonderry School District
21 located at 268C Mammoth Road.

22 DIRECT EXAMINATION

23 BY MR. HOWARD:

1 Q. Good morning, Mr. Curro.

2 A. Good morning.

3 Q. Would you kindly describe for
4 Mr. Mitchell a little bit of your personal
5 background; your family, where your kids are these
6 days, and then we will get into your education.

7 A. Sure. I'm married. I have three kids.
8 One is now a lieutenant in the Air Force. He
9 received his engineering degree from Clarkson,
10 received his master's from what's called the Air
11 Force Institute of Technology in Dayton, Ohio, and
12 is now a commissioned lieutenant in the Air Force.

13 The second one, Jimmy, will be
14 graduating from Saint Lawrence in a week in math
15 and statistics, and has been accepted in Iowa State
16 for a Ph.D. in math and statistics.

17 And the princess, Laura, is at RPI, and
18 she is an Air Force ROTC cadet, I think that's what
19 they're called, and is in engineering, of course,
20 at RPI.

21 Q. And Mr. Curro, have your children
22 largely grown up in the Londonderry area?

23 A. Yes, all three went through the

1 Londonderry School District public education
2 program.

3 Q. Before we get into your profession, how
4 about your educational background. Where did you
5 go to high school and go on to college?

6 A. I grew up and went to Melrose High,
7 which is in Massachusetts right outside of Boston.
8 Went to U. Lowell, it wasn't U. Mass. Lowell back
9 then -- received a bachelor of science in economics
10 and accounting, and then in '94 received my MBA in
11 public management from BU.

12 Q. When did you get your bachelor's degree
13 in economics and what did you say -- economics
14 and --

15 A. Accounting.

16 Q. -- and accounting. When did you get
17 your --

18 A. '79.

19 Q. In 1979. When you graduated from
20 U. Lowell in 1979 did you go into the workforce?

21 A. I went to work at Boston University for
22 about ten years.

23 Q. And what were the various positions you

1 held at Boston University?

2 A. It's safe to say all of them were
3 financial management of one kind or another,
4 starting with in the controller's office, I think
5 the position was like student account
6 representative. Went to a group called conference
7 services, still under the business affairs
8 division, and then finished as the director of
9 finance and personnel for the school of management
10 at BU.

11 Q. The director of finance and personnel
12 for BU management?

13 A. Yes. Each school has their own office
14 and budget and so forth.

15 Q. While you were at BU, is that when you
16 began your master's program?

17 A. Yes. Came into work one day, and I had
18 seen this dean had left an application for an MBA
19 application on my desk. I took that as a hint that
20 he wanted me to apply for the program, so I did, it
21 was on a part-time basis.

22 Q. And then when did you complete that
23 master's?

1 A. I believe it was '94. It was
2 part-time. I had left BU and I had started my
3 position as finance director for the town of
4 Londonderry when I completed my MBA, so I commuted
5 to BU for about two years.

6 Q. And within the MBA, is there sort of
7 subspecialty designation that you have?

8 A. Yes, if I remember correctly BU has
9 three of them, there is the traditional track of an
10 MBA, then there's a public management program, and
11 then there's a health management program. And if
12 you received you full MBA degree, you got I guess
13 you'd call it concentration or a specialty in
14 either public management or health management.

15 Q. And did you have a concentration --

16 A. In public management.

17 Q. -- in public management. When did you
18 start as the finance director for the town of
19 Londonderry?

20 A. In June of 1992.

21 Q. And how long did you remain in that
22 position for the town?

23 A. Until about June or July or August of

1 about 2000.

2 Q. So for about eight years?

3 A. Yes.

4 Q. And as finance director, is it fair to
5 say that you oversaw all of the financial
6 operations of the town of Londonderry?

7 A. Yes, financial management, risk and
8 insurance programs, benefits, budgeting.

9 Q. In your position as town administrator,
10 did you also belong to any professional
11 organizations related to the work you did?

12 A. Finance director.

13 Q. You were finance director?

14 A. Yes.

15 Q. Were you then also a member of any --

16 A. Yes.

17 Q. -- professional organizations?

18 A. Yes, I joined a common group called
19 GFOA, if you've heard of it, it's Government
20 Finance Office Association, which is an affiliate
21 of NHMA and provides an array of training for
22 finance people in -- in municipalities or in school
23 districts.

1 Q. And at some point did you serve as an
2 officer in that organization?

3 A. Yes, I -- there's a -- there's a
4 general membership, and then there's a slate of
5 officers, the standard president, vice president,
6 treasurer, secretary. I think it was like '98,
7 dates -- I'm not good with dates sometimes --
8 sometime around '98 I was president of
9 New Hampshire GFOA, and then there's also another
10 group called New England GFOA which all six states
11 belong to, and I was president of New England GFOA
12 I think the same -- the same year.

13 Q. Now, after your tenure with the town of
14 Londonderry as its finance director, what was your
15 next professional position?

16 A. I moved over to where I am now, which
17 is the business administrator for the Londonderry
18 School District.

19 Q. So you've held that position now for
20 about 12 years?

21 A. Since 2000, yes.

22 Q. And could you describe your
23 professional duties as the business administrator

1 for the Londonderry School District?

2 A. Similar to the finance director,
3 obviously the financial management, budgeting
4 aspects of the school district. We also have
5 responsibility for food service, facilities
6 management, obviously the schools have a lot more
7 buildings in the town than the towns do,
8 transportation, contract management, along with
9 insurance and risk programs.

10 Q. And what is the annual budget of the
11 Londonderry School District that you oversee?

12 A. Right now it's about 64 million, gross
13 budget.

14 Q. I want to now bring you back in time to
15 the late 90s. Did there come a point in time
16 where you became a member of what was then the
17 HealthTrust board of directors?

18 A. Yes.

19 Q. Do you recall approximately when that
20 was that you first began service?

21 A. I'm going to say mid-to-late 90s, or it
22 could be '97, '98, '96, one of those years.

23 Q. When you were first brought onto the

1 board, were you brought on as a board member that
2 was voted off a slate of potential board members,
3 or were you appointed to fill an empty slot?

4 A. I believe I was asked -- I'm not sure
5 if it was John Andrews or Wendy Parker -- to fill
6 an exiting member, member who was leaving before
7 the term was up, and then I think in '99 or
8 something close I was actually, like, voted as a --
9 as a -- voted in the slate of officers for to
10 continue the term.

11 Q. Do you recall when you first came into
12 the board if that was around a period of time that
13 it was in difficult financial shape, so to speak?

14 A. What I remember is that there was lots
15 of discussion about reserves, lots of discussion
16 about the loss that had incurred, and those were
17 the two areas that were, I would say, under
18 discussion.

19 Q. And over the course of approximately
20 the first year, did you come to understand what
21 those issues were, the losses and the decrease in
22 the members' balance?

23 A. I would say it takes a little bit more

1 than a year to get a grasp of what goes on, and so
2 you depend on -- or at least I did -- on, I would
3 say, some of the veteran members of the board to
4 kind of get an understanding.

5 Certainly I got an understanding of the
6 numbers and what the overall view of the
7 organization, but to understand the whole
8 complexity of rate structure, reinsurance, stopgap,
9 all the stuff, it probably takes two or three years
10 to kind of get a real handle and firming of the
11 ground to move forward.

12 Q. I'm going to show you what's already
13 been marked as Exhibit 428, although I think it's
14 still for identification. 428.

15 MR. HOWARD: We don't need to put it on
16 the screen, that's fine. And I'll give
17 Mr. Volinsky also a chance to get his copy.

18 MR. VOLINSKY: Thanks.

19 BY MR. HOWARD:

20 Q. Mr. Curro, is that a letter that I
21 showed to you previously?

22 A. Yes.

23 Q. And is this letter of October 15th,

1 1997 from Blue Cross/Blue Shield to NHMA
2 HealthTrust -- Health Insurance Trust, is that
3 around the time that you came into the
4 organization?

5 A. Yes.

6 Q. And does the letter reflect a concern
7 on the part of Blue Cross/Blue Shield about the
8 financial position of HealthTrust at the time?

9 A. Yes.

10 MR. HOWARD: With that, Mr. Mitchell, I
11 move to strike the ID on 428.

12 MR. VOLINSKY: No objection.

13 THE PRESIDING OFFICER: With that no
14 objection, the ID is stricken and No. 428 is now a
15 full exhibit.

16 (LGC Exhibit 428 was admitted into evidence.)

17 BY MR. HOWARD:

18 Q. And we'll come back to the discussion
19 on Blue Cross/Blue Shield a little bit later.

20 After you joined the board in that
21 timeframe, over the next few years, is it fair to
22 say that there was regular, ongoing discussion
23 about members' balance, among many other issues,

1 but about members' balance?

2 A. Yes.

3 Q. Was that a fairly constant issue on
4 what it ought to be and how to improve it?

5 A. I would say for the next three or four,
6 five years there were a constant theme of -- it
7 would come up -- I wouldn't say casually, but among
8 the other items -- members' balance, what to do
9 about it, is the way we're doing it correct, is
10 there a better way of doing it.

11 And I think somewhere around, I'm going
12 to say 2000, 2001, we kind of jumped on it and
13 said, okay, we've talked about it, we've made it a
14 concern. I think somewhere around 2001 or two we
15 actually gave Peter Riemer a task, if you want to
16 call it a task, to see if there is a better, more
17 robust, I'll say professional or a standard that
18 the insurance industry uses that would better
19 calculate a true number or true value of what a
20 members' balance for our organization should be.

21 Q. And just so we're all on the same page,
22 when we talk members' balance, that's sort of the
23 capital reserves, so to speak?

1 A. Yes. Sorry.

2 Q. No need to apologize, just wanted to
3 make sure we were all talking about the same
4 thing.

5 Prior to 2002, what was the basis upon
6 which HealthTrust, Inc. was determining what its
7 member balance ought to be?

8 A. If I remember correctly, it was a 20
9 percent -- or a percentage -- I think 20 percent
10 was the number of claims, and I believe they had
11 used that, like, from the beginning.

12 And I'm not sure anybody disagreed with
13 that, but they just wanted to see if there was --
14 if it was time to maybe see if there was a more
15 professional stand -- professional or a standard,
16 more robust calculation that we should at least
17 look at moving forward.

18 Q. I'm not sure if you misspoke or not.
19 You said 20 percent of claims. You mean claims or
20 premiums, or are those in your mind the same
21 thing?

22 A. No, not the same thing. I have to say,
23 I can't remember now if it was 20 percent of claims

1 or premiums, it was -- it was one of them. It
2 might have been premiums.

3 Q. But in any event, it was a simple
4 percentage of --

5 A. Yes.

6 Q. Thank you. And the board was looking
7 for potentially a more -- I think the phrase you
8 used -- robust or professional way of determining
9 what a members' balance ought to be?

10 A. Right, correct number should be looking
11 forward.

12 Q. What the correct target number ought to
13 be?

14 A. Yes.

15 Q. All right. And so you asked Mr. Riemer
16 to investigate that issue for you?

17 A. Yes.

18 Q. And just so we're clear, you are on the
19 board of HealthTrust at the time, are you on any
20 particular subcommittees?

21 A. I have been on the finance committee
22 from day one of my tenure with HealthTrust or GLC.

23 Q. When you started with HealthTrust you

1 immediately went on to the finance committee?

2 A. Yes.

3 Q. Made sense, given your background?

4 A. That's why I was put there, yes.

5 Q. Now, once LGC, Inc. was created in 2003
6 and you went onto the LGC, Inc. board, correct?

7 A. Yes.

8 Q. And did you remain on the finance
9 committee?

10 A. Yes.

11 Q. And what is your position on the
12 finance committee now?

13 A. Now I'm the chairman of the finance
14 committee.

15 Q. And how long have you been the chair?

16 A. I'm going to say six years.

17 Q. Who was the prior chair, do you recall?

18 A. I think the prior chair was Julia
19 Griffin, and I think John Bohenko before that.

20 Q. So coming back to the discussion about
21 the method by which the board wanted to determine
22 the target -- the target numbers for its members'
23 balance. Did Mr. Riemer come back with a

1 recommendation to the finance committee and
2 ultimately to the board?

3 A. Yes, he came back with a
4 recommendation -- actually it was a two-part
5 conversation. It was first his recommendation was
6 a method or a calculation or a formula, whichever
7 way you want to use, of what you've all heard to as
8 RBC or risk based capital.

9 And so the first discussion was Peter
10 went into great detail of why he chose RBC, what he
11 felt was the at -- was the positive attributes of
12 what RBC calculates and brings in as far as like
13 doing statistical analysis of the program, and he
14 thought that was a -- from what he saw, it was an
15 industry standard of insurance companies, and to
16 him it provided the most robust determination of
17 what the reserve level should be for a program of
18 our size.

19 Q. And ultimately did the finance
20 committee embrace the idea of converting to an RBC
21 approach?

22 A. Yes, that was step one.

23 Q. And did the board as a full board also

1 adopt that approach?

2 A. Yes.

3 Q. What's step two?

4 A. Well, then step two then is after we
5 agreed with the formula or the calculation or the
6 method, I believe there's a set of -- there's a
7 word I can't remember now -- that determines levels
8 of RBC, 1, 2, 3, 4, 5, I think it goes to like 6 or
9 7.

10 Q. So there's a sliding scale of RBC --

11 MR. VOLINSKY: Your Honor.

12 THE PRESIDING OFFICER: Mr. Volinsky.

13 MR. VOLINSKY: I object to the leading.

14 Let's allow the witness to come to his answers.

15 THE PRESIDING OFFICER: Just rephrase,
16 if you would.

17 THE WITNESS: I can answer it.

18 THE PRESIDING OFFICER: Well, no, he
19 needs to rephrase the question.

20 MR. HOWARD: I'll strike my question.

21 THE PRESIDING OFFICER: Very good.

22 Thank you, Mr. Howard.

23 MR. HOWARD: As harmful as it appeared

1 to be, I'll strike my question.

2 MR. VOLINSKY: Object, move to strike.

3 THE PRESIDING OFFICER: And it will be
4 stricken. And, you know, let's just get on with
5 the morning.

6 MR. HOWARD: Understood. Just trying
7 to facilitate things, that's all, but if you would
8 like to go step by step, I'm happy to do that.

9 THE PRESIDING OFFICER: That's not my
10 desire, but I'm also not going to sit and let
11 attorneys get snipes in in the ninth inning of the
12 game. So let's just proceed, please, gentlemen,
13 as we have.

14 BY MR. HOWARD:

15 Q. Mr. Curro, you talked about -- you just
16 mentioned 1.0 and 2.0. What was the board being
17 informed by Mr. Riemer about the significance of
18 those numbers?

19 A. Each one has a control limit that
20 identifies where -- or a significance of level of
21 reserves. So I can't give you verbatim what Peter
22 told us, but it goes something like this: 1 RBC
23 would mean you are basically insolvent, 2 RBC, I

1 believe you are near insolvency, and if it was an
2 insurance company, they would be looking to either
3 take you over or receivership, and require a plan
4 of action from the organization, board or whatever,
5 on how you were going to grow the organization and
6 improve the financial strength of the -- of the
7 organization.

8 3 RBC is, if I remember correctly,
9 you're okay, but you're on a watch list. You know,
10 you're one step from getting into trouble.

11 4 RBC -- again, I'm paraphrasing -- you're fine.

12 5 RBC is where -- is in good financial strength,
13 and I believe in talk -- in subsequent meetings at
14 the board and the finance level, 5 RBC is where the
15 Anthem -- where Anthem would like its affiliates to
16 get to, for a variety of reasons.

17 We've got to remember -- I've heard
18 this for about a couple of years -- that reserves
19 are there for claims, and claims only. And I've
20 always tried to remind, at least my little group of
21 finance people, that reserves are not for claims,
22 reserves are there to protect the organization on
23 the assumed risk of the entire organization.

1 Claims are part of the assumed risk,
2 but there are other factors that come into play
3 which reserves are there to protect the financial
4 strength. So it's not just claims, as I've read in
5 the paper a few times, I would say it's to guard
6 against the assumed risk of the organization that
7 it intends to guard against.

8 Q. So at this point in the process in 2002
9 the board is attempting to set what it's going to
10 consider to be it's RBC target going forward?

11 A. Correct.

12 Q. You mentioned a moment ago that an RBC
13 level of 5.0 was suggested to the finance
14 committee, and you mentioned Anthem.

15 A. Yes.

16 Q. What was your understanding as a board
17 member and member of the finance committee about
18 why Anthem wanted to see 5.0?

19 A. Well, I would say Anthem -- you have to
20 remember that -- that HealthTrust, or LGC, its
21 third-party administrator is Anthem. So, from
22 their standpoint, if I was a senior administrator
23 of Anthem or CIGNA or whoever else, you never would

1 want any of your affiliates to become insolvent or
2 go under or so forth, because it ultimately, if I
3 was them, it would reflect back on their PI.

4 So by asking affiliates if you're going
5 to use our products and we're going to be the
6 third-party administrator, we would like you to get
7 into a financial position of good strength, so that
8 you don't run into if you do -- ultimately you
9 will -- have a bad year, you're not becoming
10 financially weak enough to sustain operations.

11 Q. Ultimately what did the board adopt for
12 a target RBC going forward, and why did it do
13 that?

14 A. The final number that rested through
15 many discussions, and I would say a fairly robust
16 discussion, was what we are now is 4.2.

17 Q. And why 4.2, Mr. Curro?

18 A. From my standpoint -- one board member
19 here -- 4.2 was pretty much just above the halfway
20 point that I would look at. And I would look at as
21 3 being the minimum number I would ever want to get
22 to, if I had a choice, 5 being a number that was
23 too high, I thought in my opinion, 4 is obviously

1 in the middle. We're always conservative, so 4.2,
2 4.3 was, at least for me, acceptable.

3 Q. And in this process of deciding the
4 appropriate and acceptable level of RBC, did you
5 consider the board's decision on that point to be
6 thorough?

7 A. Oh, yes. Yes.

8 Q. Did you rely upon the recommendations
9 and analysis of your outside consultant,
10 Mr. Riemer?

11 A. Always.

12 Q. All right, we'll have some discussion
13 about RBC as we go along here. The next thing I
14 wanted -- strike that. Around that same time in
15 2002 that RBC was chosen, HealthTrust was still --
16 it was its own entity, right --

17 A. Yes.

18 Q. -- separate board of directors? Was
19 there also discussion going on about changing or
20 reorganizing the corporate structure?

21 A. Yes. As a member of HealthTrust, we
22 were -- we knew that there was a separate committee
23 made up of an HMA, PLT board, and HealthTrust.

1 I'll call it executive committee for lack of a
2 better word, I know there was a proper name for it,
3 to develop -- to go through the pros and cons of
4 consolidating the assets. And then we would get a
5 report back from our representative, if you will,
6 as to how the proceedings are going, where we're
7 going, and so forth and so on.

8 Q. This executive committee that you
9 mentioned, do you have any recollection of it
10 being called the Joint Competition Committee?

11 A. Yes, I knew there was a word, I
12 couldn't think of it.

13 Q. Were you on the Joint Competition
14 Committee?

15 A. I was not.

16 Q. And do you remember who from the
17 HealthTrust board was on the Joint Competition
18 Committee? If you don't, that's fine. I'm just
19 asking you if you remember.

20 A. It might be a guess, but I'm going to
21 say Keith Burke and Jim Weiss.

22 Q. And just quickly for Mr. Mitchell's
23 edification, who is Keith Burke?

1 A. Keith Burke was on -- well, HealthTrust
2 or LGC, and then he was superintendent of -- I
3 think it was SAU 1 down in Peterborough.

4 Q. And Jim Weiss?

5 A. Jim Weiss, well, at the time that I
6 knew him he was superintendent of Sanborn Regional.

7 Q. And I've seen minutes where he's
8 referred to as Doctor Weiss. Is he a physician or
9 Ph.D.?

10 A. No, doctor of education.

11 Q. All right. So the person who was the
12 representative to the Joint Competition Committee,
13 he would come back and make reports to you?

14 A. Yes, when we had a regular HealthTrust
15 meeting, part of the agenda would be a report back
16 from the joint committee.

17 Q. And during this process of deciding
18 whether to reorganize, did the HealthTrust board
19 have the advice of counsel, Attorney Lloyd?

20 A. Yes.

21 Q. And ultimately did the HealthTrust
22 board decide to reorganize and merge into one
23 overall board of directors?

1 A. Yes, there was a special meeting
2 called -- I forgot, it was Manchester, I can't
3 remember the location -- all three boards were
4 called, went into separate areas and had separate
5 discussions and votes, and HealthTrust voted to go
6 along with the -- with the proposed merger of
7 assets.

8 Q. Do you recall that there was a joint
9 resolution that you were asked to vote on?

10 A. Yes. And all three had to agree to
11 the -- to the -- to the proposal.

12 Q. With respect to HealthTrust, did you
13 vote for the reorganization?

14 A. Yes, I did.

15 Q. There was also a separate board for
16 Property and Liability Trust, is that correct?

17 A. Yes.

18 Q. And was there a separate board for
19 NHMA?

20 A. Yes.

21 Q. And did each of those boards also vote
22 for the merger?

23 A. Yes.

1 Q. Did you serve on either of those
2 boards?

3 A. No.

4 Q. Did you have any influence over any of
5 those boards or voting privileges --

6 A. No, sir.

7 Q. -- on those boards? You did not?

8 A. No.

9 Q. Why did you support HealthTrust merging
10 into a parent entity known as LGC, Inc.?

11 A. There were -- there were several
12 factors that I voted for it. One was as a finance
13 director of -- or a customer of the products -- and
14 I say finance director because when I was with the
15 town, you'd have products as you do now with the
16 school district with HealthTrust and property
17 liability.

18 And what would happen is -- from my
19 standpoint is, one of the decisions I made -- we
20 would get a representative from HealthTrust to talk
21 about our rate, our rate structure, why we went up,
22 what our claims are doing, so forth and so on.

23 And then inevitably as the person was

1 leaving, on property liability, and the person
2 would say you got to go to them. Well, who is
3 them? Well, you got to go to property liability
4 because I just do health.

5 So one of the issues that got brought
6 up was if we merged the entity, or merge the
7 assets, do we then streamline the operation, do we
8 then have representatives going out to the members,
9 schools and towns, with a plethora of knowledge of
10 all the coverages, not just one.

11 Now, that person may have to go back
12 and get detailed information, but certainly will
13 have an idea, can answer basic questions on health
14 or property liability or workers' comp, or, on
15 section 55 -- 45 plan and not just worry about the
16 side of health or the side of the property
17 liability, so that was one.

18 Two, by merging we could then have one
19 pool managed by a single board that could -- that
20 had the ability to use assets or the flexibility of
21 using assets to meet either current member needs or
22 future member needs, whatever that is.

23 There may be ten years from now a new

1 type of insurance or something that the members
2 want us to get into, and if you kept with the two
3 5-0s, you wouldn't have that ability, or if the
4 ability was there it was much more difficult to use
5 assets as one pool to address the needs of the
6 members.

7 And then the third one was we had heard
8 or learned -- and I can't remember how, it was a
9 while ago -- that Primex had already entertained --
10 certainly entertained the idea and had been looking
11 into creating a health program of its own, which
12 would be a direct competition with us.

13 And, finally, the whole idea of the
14 flexibility of the assets was to then look at then
15 down the road later on does the workers' comp. plan
16 fit into the whole mix of what LGC was looking to
17 do.

18 Q. You just mentioned Primex. Were there
19 certain members of the board who were more
20 emotional about competing with Primex than others?

21 A. Yes, I think that's a fair assessment.

22 Q. Were there members of the board who
23 expressed their displeasure with Primex?

1 A. The word displeasure, I would -- the
2 word displeasure is strong. There were members of
3 the board that were concerned about the financial
4 strength of Primex and the ability to start a
5 workers -- health program against the HealthTrust.

6 Q. In the end, regardless of how any
7 individual member felt about competing with
8 Primex, did you view the board to be acting in the
9 best interest of HealthTrust in voting to
10 reorganize, and ultimately to merge the assets
11 into a single, one-stop shopping organization?

12 A. I would agree with your statement, but
13 I would include that it was the best interest of
14 LGC and the members.

15 Q. And the members, meaning the
16 participating members?

17 A. Yes.

18 Q. After LGC, Inc. was formed in 2003, you
19 became a member of that board?

20 A. Correct.

21 Q. And over the course of the years that
22 you've been with this organization, have you been
23 provided training as a board member in the

1 discharge of your fiduciary responsibilities?

2 A. Yes, in a couple of manners. One, at
3 the annual retreat, Bob Lloyd, and then Mark McCue,
4 whichever one was there at the time, at the annual
5 retreat there was always a I'll use the phrase
6 pre-kickoff conference at the retreat, which all
7 board members were invited, but certainly it was
8 more directed towards any new members, and to sit
9 through a lecture from legal counsel, whoever that
10 was at the time, the fiduciary responsibilities and
11 overall responsibilities of you as a board member.

12 And then from there, usually a couple
13 of staff members would then give an overview of the
14 coverages, the explanation of how rates are
15 determined, what certain acronyms mean in the
16 insurance business, so going forward at least this
17 board member had some grasp of what the
18 organization was about, what -- what the
19 responsibility of a board member when you vote are.

20 Q. And do you believe that in your actions
21 and service on the board that you have always
22 acted in compliance with your fiduciary
23 obligations to the entities over which you are a

1 director?

2 A. Yes.

3 Q. And when you make those decisions, do
4 you also keep in mind what's in the best interest
5 of the membership, those people who are buying
6 into the pools?

7 A. Yes.

8 Q. So I need to ask you, now you are a
9 director over three coverages. How do you go
10 about discharging your obligations when maybe the
11 interests are different from one coverage to
12 another?

13 A. My synthesizing of information and
14 coming to a conclusion is that the parent company,
15 LGC, is the underlying factor, in that the assets
16 are there to insure that the parent company is
17 viable, strong, financially strong, and is
18 addressing the needs and the services of the
19 members.

20 Q. Why was it, in your view, in the best
21 interest of the members to merge these assets and
22 to have one board of directors? What service were
23 you providing to them that was in their interest?

1 A. You were providing the -- again, the
2 flexibility of assets to address needs that would
3 be brought up either via letters, oral
4 conversations with executive director or board
5 members, either current or in the future.

6 In this case, there were concerns from
7 members that had asked us to look into the
8 consideration of starting the workers' comp.
9 program.

10 Q. So let's continue right on with that.
11 You have members that are asking for a workers'
12 comp. program?

13 A. Yes.

14 Q. Walk us through the decision-making
15 process to start workers' comp. and to fund it to
16 make sure it became eventually a viable entity?

17 A. Well, there are a couple of things, and
18 the history goes back a little bit. When it was
19 first -- I remember it was Comp Funds of
20 New Hampshire, and then it became Primex. When it
21 was Comp Funds of New Hampshire and Primex, there
22 was one workers' comp. program in the 5-B risk pool
23 environment, and that was them.

1 So most if not all -- well, I can't say
2 all, because Manchester and Nashua probably
3 didn't -- but most of your municipalities and
4 school districts bought their workers' comp.
5 insurance from -- whether it's Comp Funds of
6 New Hampshire or Primex, whichever name they were
7 using at the time.

8 And it was common from talking to
9 colleagues in GFOA and others, that the practice
10 that was being taken at that time was that Primex
11 or Comp Funds would deny claims regularly, and the
12 phrase we'd hear is deny, deny, deny, in hopes that
13 the person or the claim would then be funded
14 through health insurance. And health insurance
15 would be through the HealthTrust.

16 So one company has an obligation for a
17 comp funds. If the person gives up and just backs
18 off his claim of workers' comp., that claim would
19 then be funded by the claimant's health insurance
20 program, which I would say nine out of ten times
21 was the HealthTrust.

22 Q. So why did you need to have workers'
23 comp. in that dynamic?

1 A. Well, the value of workers' comp. for
2 HealthTrust was, one -- one of two factors. One,
3 if the assets of health -- from health help start a
4 workers' comp. program, then the assumption would
5 be that there was a viable -- a second alternative
6 or another option for members, or nonmembers,
7 anybody, municipal or schools or county in the
8 state, to look at a second option for a workers'
9 comp. program.

10 If they chose workers' comp. program
11 and they had health with LGC, then it's a matter of
12 the decision of the group which coverage best suits
13 the need. And there's a little difference in
14 legality of whether it's workers' comp. or health,
15 I'm not sure you want me to go there.

16 The second thing, though, from the
17 parent point of view is if you start a workers'
18 comp. program, and the assumption was that there
19 was only one in the state, and that one in the
20 state pretty much had the liberty of charging
21 whatever prices, premiums they want for workers'
22 comp., by entering a second workers' comp. program,
23 you inevitably induce competition. So even whether

1 they -- whether Londonderry, I'll use me as an
2 example -- chose to use workers' comp. in LGC, the
3 fact that a viable one is there would ultimately
4 reduce the price -- well, you would assume workers'
5 comp. would reduce the price of their current
6 workers' comp. premiums.

7 So either way the members, whatever
8 municipality or school district it is, should win
9 out. Because, keep in mind, workers' comp. is a
10 required insurance program for all municipalities
11 and school districts. It's not a matter of does
12 the town want to offer a health insurance program
13 to its employees, the fact is workers' comp. is
14 required, so you had to get it either through the
15 5-B risk pool or go outside. And to be fair, the
16 outside didn't provide the necessary coverage that
17 the schools and towns needed from a workers' comp.
18 program.

19 Q. Now, you understand -- strike that.
20 How did LGC, then, go about creating this workers'
21 comp. program?

22 A. To my recollection, we went through
23 what's called a strategic plan initiative where we

1 identified not only workers' comp. but other areas
2 that we wanted to address to strengthen the
3 organization over the next X years, workers' comp.
4 being one of them.

5 So the transfer of assets from PLT and
6 workers' comp. to what I guess we call the parent
7 company, and then from there the assets that were
8 needed on an ongoing basis to cover the gap between
9 the premiums and the claims in workers' comp. were
10 used to make that coverage balance or whole.

11 Q. Did a workers' comp. line of coverage
12 exist prior to the merger?

13 A. I believe there was one, but it was
14 small, it was inefficient, it wasn't really a
15 program that was regularly available and thought
16 of, so this -- this was really -- even though it
17 was there, I believe it was -- it was not a product
18 that was marketed and anybody really knew about.

19 In fact, I didn't know -- even though I
20 was on the HealthTrust, I didn't even know it
21 existed over there.

22 Q. Do you have any recollection during
23 your service on HealthTrust of HealthTrust

1 committing some funds to a workers' comp. program
2 prior to the reorganization?

3 A. Yes, I think before the joint committee
4 or maybe in conjunction with the joint committee,
5 both HealthTrust -- and we were told this -- both
6 HealthTrust and PLT were asked to contribute a seed
7 money of 500,000 each.

8 Q. Do you recall if that was done?

9 A. Yes.

10 Q. So now let's go back to the strategic
11 plan you were talking which was after the merger.
12 Did the board make a decision on how it was going
13 to fund the strategic plan, part of which would
14 become assets available for workers' comp.?

15 A. I believe the strategic plan, from the
16 health side anyways, was 1 percent of premiums
17 would be taken from -- I call it members' balance,
18 there's also a word, I guess it would be reserves.

19 Q. So there would be a calculation of what
20 1 percent of premiums were for that year?

21 A. Yes.

22 Q. Was there any effort to differentiate
23 between employer and employee contributions to the

1 premiums?

2 A. Yes. One of the board members, I
3 believe he was the vice chair and was -- was a --
4 what we call an employee member, Mr. David Lang,
5 was concerned about -- about this. And so the
6 calculation that we use is we take a pro rata value
7 and use that as the contribution that goes --
8 excuse me, what is called the parent company.

9 Q. And so that 1 percent of premiums
10 calculation, the board, did it take action to
11 direct management to pull the employee
12 contributions out of the 1 percent calculation?

13 A. Yes.

14 Q. All right. We've had a lot of
15 discussion in the course of this hearing about the
16 viability of workers' comp. You've been on the
17 board now for -- since the merger for nine years.
18 Do you have a view of how the workers' comp. is
19 going?

20 A. Yes. It was interesting that with the
21 health of Jenny --

22 Q. When you say Jenny, do you mean Jenny
23 Emery?

1 A. Yes, I was thinking of her last name --
2 and our actuary who does property liability and
3 workers' comp. laid out a series of projections on
4 numerous factors over the workers' comp. program.

5 Obviously pricing of the product is
6 one, how many -- how many claims or how many
7 members would be coming into the workers' comp.
8 program, the growth of the program.

9 We talked about how you need to grow
10 the program to get to a stable rate, to get the
11 program to be able to be self-supporting, and that
12 the strategic plan would have to -- the board would
13 have to commit the strategic plan to fund the
14 workers' comp. until it met this net mass of
15 members in order for workers' comp. to stand on its
16 own.

17 And there were several projections, and
18 every year the actuary for property liability and
19 workers' comp. would take in the new members and
20 the claims and then redo the calculations, and then
21 project, okay, we thought this, we actually did
22 this, and then redo the projections going forward.

23 Q. Do the contributions from each of the

1 coverages, HealthTrust, property liability and
2 workers' comp., under the 1 percent strategic
3 plan, do contributions from HealthTrust still go
4 to workers' comp.?

5 A. Today?

6 Q. Today.

7 A. No.

8 Q. And do you recall when that stopped?

9 A. Two years ago.

10 Q. In light of the fact that those
11 contributions are no longer made by HealthTrust,
12 how is workers' comp. looking, in your opinion?

13 A. The last rating meeting that we had in
14 finance, they -- they being the actuary for
15 property liability, workers' comp., laid out a
16 series of rate increases over the next three years
17 that they said would be necessary to get workers'
18 comp. even, and we -- I believe we have already
19 approved the first year of the recommended rate
20 increase for workers' comp.

21 So what will happen now is we'll go
22 through a year, the actuary will come back with, I
23 expected this, this happened, and then adjustments

1 go forward.

2 Q. And is it fair to say that as we sit
3 here today the board of directors for LGC, Inc.
4 remains committed to the workers' comp. program?

5 A. Yes.

6 Q. Going back to the topic of the RBC just
7 for a moment and the selection by the board of
8 4.2. You are also involved in rate making, are
9 you not?

10 A. Yes, I am.

11 Q. Can you give us generally an overview
12 of how that rate-making process works, how you
13 establish rates for the next -- the next cycle?

14 A. I certainly hope so.

15 THE PRESIDING OFFICER: Excuse me, just
16 for clarification, which rates are these?

17 BY MR. HOWARD:

18 Q. We're going to talk health rates, okay?

19 A. Yes.

20 MR. HOWARD: And I apologize,
21 Mr. Mitchell, it's a very good question.

22 BY MR. HOWARD:

23 Q. We'll talk health rates?

1 A. Yes. Remember finance receives the
2 information first from Peter Riemer and staff. And
3 I would say there entails about two and a half
4 hours of I would say a robust discussion with Peter
5 and staff over the rates.

6 Q. Can I just stop you right there for a
7 second? You're in the finance committee meeting,
8 that discussion is going to take two and a half
9 hours?

10 A. Yes.

11 Q. What do you, Peter Curro, do before you
12 even go to that meeting to know what it is you're
13 going to talk about?

14 A. Well, we get the agenda and I'll say
15 the packet, the backup information, usually about a
16 week ahead of time. So me, Peter Curro, if I have
17 any questions about the numbers or where we're
18 going or something isn't -- or I didn't expect
19 something, a number to be a certain way, I would
20 probably called Sandal first or Wendy.

21 Q. So you and the other finance committee
22 members are getting this package of presumably
23 Peter Riemer's work?

1 A. Yes, about a week ahead of time.

2 Q. Let me just ask you, in your lifetime,
3 you've been a volunteer member of this board now
4 for what sounds like 15, 16 years. How many times
5 have you gone through that process?

6 A. The rate setting?

7 Q. Yes.

8 A. Well, if I've been a member of the
9 board 17 years, I would say 17 times.

10 Q. A process that you are very familiar
11 with?

12 A. Yes, I think so.

13 Q. All right. So, now you're in the
14 finance committee meeting with Peter Riemer. What
15 are the issues that you're discussing in terms of
16 setting rates?

17 A. Sure, and I'll highlight so I won't get
18 to every piece of line. What Peter would say is we
19 start with the current value of the premiums that
20 are coming in. He would make -- he would do
21 assumptions of trend. He would do an assumption
22 of -- I can't think of the word, but because we are
23 making calculations on -- this is the GMR that

1 we're talking about, guaranteed maximum rate, which
2 is done like in October.

3 So if you're projecting out 18 months
4 there's a calculation that Peter does to
5 incorporate 18 months' worth of projection. You
6 then get into the area where Peter will tell us
7 what he calculated medical trend to be, and medical
8 trend here would be like -- like what's the CPI of
9 medical coverage.

10 Then we get into the risk margin, okay.
11 Then we get into the administrative costs. There's
12 administrative percentage for Anthem, there's
13 administrative costs that Sandal has calculated
14 that would be for LGC staff, and then there would
15 be a total -- new total amount of what needs to be
16 brought in to cover the projected claims, claims in
17 both health and pharmaceutical.

18 Then there's two offsets. One offset
19 is income from investments, and then I asked a
20 second line be added, an offset from surplus, both
21 are credits. Then you get down to what Peter says
22 is the average increase for the health insurance
23 pool.

1 And then there are two pools, there is
2 the July pool, which is probably 80 or 85 percent
3 of the HealthTrust pool, those are organizations
4 that have fiscal years of July 1 to June 30, the
5 bigger towns do that, all your schools do that.

6 And then there's the January pool,
7 which is what a lot of smaller towns, they still
8 are on the fiscal -- I'm sorry, the calendar year,
9 they would start January and then end December
10 31st. So we would do both pools separately.

11 The January pool does not have a GMR
12 because it's only two months away from starting.
13 The GMR is for the July pool, and what we say is
14 that's the rate that will hit the street, and then
15 we come back in April and revisit the rate and
16 determine if there are adjustments that need to be
17 made, and then that's the actual rate that goes in
18 for the following year's premiums for the schools
19 and towns.

20 Q. You have identified a number of factors
21 that go into the rates. A couple of things I want
22 to highlight or talk about. You mentioned -- you
23 mentioned the concept of risk factor.

1 A. Yes.

2 Q. What is the risk factor intended to do?

3 A. Well, you have a set of claims
4 information now. You are making assumptions that
5 the -- of some sort that these claims are going to
6 be the actual claims for a program that doesn't
7 start until the following July and that ends the
8 following June.

9 So you are extrapolate -- you've got to
10 extrapolate out 18 to 20 months of what will
11 happen, so you've got to have a margin of what if
12 we're not correct.

13 Q. After LGC, Inc. merged in 2003, do you
14 know what the risk factor started out being on the
15 rating analysis?

16 A. We're talking the risk margin?

17 Q. Yes.

18 A. Okay. The risk margin when I first
19 arrived was at, I believe, 5.

20 Q. And does the risk margin have more than
21 one component to it? What makes up that 5
22 percent?

23 A. As we would -- as Peter would explain

1 to us, in his analysis -- and I might have this
2 backwards -- if I remember correctly, 2 percent --
3 2 percent -- 2 percent of risk margin is to sustain
4 value of claims, and 3 percent at that time was
5 used for adding -- adding members' balance to get
6 to the targeted reserve calculation.

7 MR. HOWARD: For the record,
8 Mr. Mitchell, Exhibit 176 is the series of letters
9 from Mr. Riemer, and the rating analysis is within
10 that exhibit for the subsequent years.

11 THE PRESIDING OFFICER: Okay.

12 MR. HILLMAN: I'm not going to walk
13 through that exhibit with Mr. Curro, I just wanted
14 you to know for the record.

15 THE PRESIDING OFFICER: Mr. Volinsky?

16 MR. VOLINSKY: It's fine with me.

17 THE PRESIDING OFFICER: Go ahead,
18 please. Thank you.

19 BY MR. HOWARD:

20 Q. Over time, what has happened with that
21 5 percent risk factor?

22 A. Well, as we reached our RBC, or I would
23 say, you know, fairly close, there were -- the

1 finance committee would have a robust discussion on
2 the need of -- I will say it this way, the need of
3 risk margin to increase members' balance for
4 factors outside of Peter's purview.

5 And what I mean by that is we expect
6 Peter to come in with his conservative, his
7 financial -- his calculations to be the best
8 interest of LGC and keeping it viably and
9 financially strong, okay.

10 I would say it is the purview of the
11 board, or at first blush the finance committee, to
12 accept that as true and then decide whether outside
13 factors which are now coming into play which would
14 lead us to adjust Peter's actual -- Peter's actual
15 analysis.

16 In a case, let's say of -- I'll say
17 2008 or nine, in that ballpark, where we were still
18 a little bit below members' balance, or what could
19 happen is -- remember, the concept of RBC needs to
20 be understood that it is a moving target, meaning
21 if -- if we expect to take in more members, then
22 you take in more claims, the RBC grows. Or if
23 we're going to lose members, the RBC would shrink.

1 It's not an \$80 million number and it
2 doesn't move, it moves as either claims rise or
3 claims fall, depending on if more members are
4 coming in or less members are coming in.

5 So Peter would go through his analysis,
6 and I remember one time myself saying, Peter, I
7 accept your analysis and I agree with you that
8 members -- that we are slightly below the 4.2 RBC,
9 but this is not the time for us to be increasing
10 members' balance because the cities and towns are
11 hurting. So we would make that analysis.

12 We accept Peter truthfully for what he
13 does, I never want him to change, and then it's up
14 to us then to decide whether we want to go ahead
15 with that, or there are outside factors that we
16 feel should be part of the final number that gets
17 calculated.

18 Q. In this period of time when you
19 recognized that the school districts or towns were
20 hurting financially, what did you suggest as a
21 board member that you do with this risk factor to
22 provide some financial relief?

23 A. I believe now the risk margin is at 1.

1 Q. And whose idea was to drive it down to
2 1?

3 A. That would be me.

4 Q. You can say that with some pride, also.

5 A. I do.

6 Q. You've taken 5 percent and driven it
7 down to 1?

8 A. Yes.

9 Q. Next issue I want to talk about is the
10 concept -- and you mentioned it before --
11 reinsurance and aggregate stop-loss insurance. Do
12 you know what those things are?

13 A. Well, stop-loss insurance I would
14 characterize it as a high deductible for a claim.
15 If it's a single claim, I'd call it a high
16 deductible on a claim.

17 Q. On a single claim?

18 A. Yes. Aggregate is like protecting the
19 entire pool from a large amount of abnormally high
20 claims which would adversely drain the reserves of
21 the pool.

22 Q. With respect to those two types of
23 insurance today, does LGC, Inc. pay premiums for

1 those two types of insurance?

2 A. Not today. And one of the reasons was
3 the amount of reserves -- part of the strategy of
4 getting the reserves of 4.2 was we would be
5 financially strong enough not to have to cover that
6 cost on an annual basis.

7 Q. When you had that type of insurance,
8 the two types you're talking about, there was the
9 individual stop-loss?

10 A. Yes.

11 Q. Do you know at what level LGC was
12 buying that individual stop-loss insurance? If
13 you understand -- I know what I mean by the
14 question, you may not.

15 A. I understood, I can't remember the
16 levels. I know that as we grew the reserves, the
17 need for a smaller amount of reinsurance or
18 stop-loss went away.

19 So we would go from at one point 500 to
20 750, and I think the last time we bought
21 reinsurance stop-loss was at a million, and then it
22 was at that point I think Jenny Emery made the
23 suggestion like two years in advance -- two years

1 times, rather pointedly, you really don't need
2 this, and we finally agreed and no longer passed
3 that cost on.

4 Q. And we'll talk about that last comment
5 in just a moment just so Mr. Mitchell understands
6 it, if he doesn't already.

7 When you have stop-loss insurance at
8 500,000, what does that mean?

9 A. Stop-loss would mean if an individual
10 claim goes over that, you would buy insurance to
11 protect yourself.

12 Q. You would, maybe to use a term of art,
13 cede the claim over to the reinsurance after
14 you've paid \$500,000?

15 A. Yes.

16 Q. And eventually you moved that up to
17 a million dollars?

18 A. Correct.

19 Q. So the pool would pay the first million
20 on an individual and cede the rest to stop-loss
21 insurance?

22 A. Yes.

23 Q. Which is cheaper, the 500 or

1 the million?

2 A. The million, by an exponential number.

3 Q. Do you have any recollection of what
4 the actual costs were to carry that type of
5 individual stop-loss insurance before LGC stopped
6 doing it?

7 A. Not now. We had it when we made the
8 decision.

9 Q. Now, the other type of insurance, the
10 aggregate stop-loss, you don't carry that any
11 longer either?

12 A. I don't think so, no.

13 Q. And that is because your reserves are
14 sufficient, in your view, in the long term to
15 cover those substantial what we might call
16 catastrophic or major claims?

17 A. Yes.

18 Q. Now, when you bought the insurances,
19 the two types, is it fair to say that those
20 insurance premiums were an expense to LGC?

21 A. Oh, yes.

22 Q. The only thing you got back was if the
23 claim -- if the insurance actually had to be used?

1 A. Correct.

2 Q. Today is it fair to say that that
3 expense, because it doesn't exist, no longer gets
4 passed to the members?

5 A. Yes.

6 Q. Do you, however, account for the fact
7 that you have to maybe -- in your rate structure,
8 in your rating, is there a new provision to spread
9 that kind of catastrophic risk out?

10 A. Somewhere in the pooling there is that.
11 When it's explained to me by them I get it. It's
12 one of those I can't explain it back to you.

13 Q. You used to build in something for the
14 cost of the insurance policy, right?

15 A. Yes.

16 Q. Is it fair to say you now build in a
17 factor so that the pool can spread that kind of
18 loss amongst itself?

19 A. Yes.

20 Q. Is that a fair summary?

21 A. Yes.

22 Q. On your role on the board, do you also
23 deal with investments?

1 A. Yes.

2 Q. Does the board of LGC, Inc. have an
3 investment policy?

4 A. Absolutely.

5 Q. What role do you play with respect to
6 the investments and the investment policy?

7 A. Again, as finance committee we would --
8 and we do -- review the performance of our
9 investments annually with -- and we have two
10 organizations. We have an investment manager that
11 actually manages the portfolio for LGC, and then we
12 have an investment advisor that actually watches
13 the manager and would make suggestions on their
14 actions on behalf of LGC.

15 So on an annual basis we will have
16 probably two meetings, one -- one alone with the
17 investment advisor, and then one with the
18 investment advisor with the manager on I'll say a
19 conference call, for lack of a better word.

20 Q. And who is the investment advisor, and
21 who is the investment manager?

22 A. The investment advisor when I first
23 came on was Wells Canning, now I think it's Static

1 Alliance, and the investment manager is Wellington.

2 Q. Do you know if LGC, Inc. is subject to
3 the same legal restriction on the type of
4 investments it can make as is a municipality?

5 A. I don't believe we are.

6 Q. What was the investment policy through
7 roughly 2006, 2007 of LGC, Inc.?

8 A. I would say it resembled the
9 restrictions of communities and school districts, I
10 wouldn't say it was perfect, but it was -- in the
11 area of restrictiveness, I would say it was
12 comparable.

13 Q. Was there some discussion about the
14 investment policy in that 2006, 2007 timeframe?

15 A. Yes. Again, as we said, we have an
16 annual review of our performance. We have -- we
17 entertain the investment advisor to make
18 suggestions to us, and I believe one year I
19 asked -- and his name is Andrew, and I can't
20 remember his last name from Wells Canning -- if he
21 was to recommend anything to us, what would that
22 be.

23 And his answer was somewhere along the

1 lines, I understand that you want to be on the
2 conservative side of an investment portfolio, and I
3 agree you should be on the conservative side of an
4 investment portfolio, but you are so
5 conservative -- I think he used the word
6 ultraconservative -- that he said you're leaving
7 too much money on the table with -- with the fact
8 that for very, very little more risk you could be
9 adding so much money back to your investment income
10 on an annual basis.

11 And we spent a lot of time basically
12 trying to get Andrew to say, well, what is a little
13 risk, and you couldn't really pin it down to like a
14 1 or a 2, but it was clear what he was saying is
15 with very little -- adding very little risk to your
16 portfolio, you could increase the value on an
17 annual basis of your portfolio.

18 THE PRESIDING OFFICER: Excuse me, sir,
19 what was his name again?

20 THE WITNESS: I can't remember his last
21 name, he worked for our investment advisor, Wells
22 Canning. Sandal I think could probably give you
23 his last name.

1 BY MR. Howard:

2 Q. I'm going to show you a letter --

3 MR. HOWARD: Mr. Volinsky, it is 270,
4 and I believe it is page 18. 270 is not in --

5 MR. VOLINSKY: Just the letter or the
6 whole exhibit?

7 MR. HOWARD: Just the letter, not the
8 whole exhibit.

9 MR. VOLINSKY: If I can just have one
10 second.

11 THE PRESIDING OFFICER: Certainly.

12 MR. VOLINSKY: I would just as soon put
13 the whole exhibit in and withdraw objection to the
14 whole.

15 MR. HOWARD: I will accept that,
16 Exhibit 270, and the ID can be stricken and marked
17 as a full exhibit.

18 THE PRESIDING OFFICER: Okay, very
19 good. The entire Exhibit LGC 270, identification
20 is stricken, is now a full exhibit. And I
21 understand you are drawing our attention, however,
22 to page 18.

23 MR. HOWARD: And I won't ask the

1 witness any further questions about page 18, it's
2 a letter from the banking department.

3 (LGC Exhibit 270 was admitted into evidence.)

4 MR. HOWARD: Mr. Curro, we're getting
5 close to the end, so hang in there with me, all
6 right?

7 BY MR. HOWARD:

8 Q. A few specific questions for you. Your
9 school district, Londonderry, does it have
10 insurance through LGC?

11 A. Yes. We have a small group of
12 custodians -- group called custodians has health
13 insurance with LGC. We have our property and
14 workers' comp. with LGC, and predominantly the rest
15 of the staff, teachers, board staff, whatever, have
16 health insurance with SchoolCare.

17 Q. Are you involved in the purchase of
18 that insurance?

19 A. Yes.

20 Q. Does the town of Londonderry have
21 insurance with LGC, Inc.?

22 A. I believe the town -- and I'm not a
23 hundred percent, you know, involved with them -- I

1 believe they still have the health and dental with
2 LGC, and they just moved their property and
3 workers' comp. to Primex.

4 Q. When you were the finance director for
5 the town, were any of the insurances through
6 either HealthTrust or PLT?

7 A. When I was with the town, health and
8 dental were with HealthTrust, it wasn't LGC back
9 then, and I believe the property and workers' comp.
10 was through Comp Funds of New Hampshire.

11 Q. And when you were involved in
12 purchasing insurance, did you at any time have an
13 intent that the purchase of that insurance be an
14 investment in HealthTrust or LGC, Inc.?

15 A. No.

16 Q. Did you at any time have an expectation
17 that the purchase of insurance through either
18 HealthTrust or LGC, Inc. was for profit?

19 A. No, it was to cover either the property
20 or the employees of the organization.

21 Q. In and around 2007 there was a surplus,
22 correct?

23 A. Yes.

1 Q. And did the questions come up as to
2 how, when and by what method you would return that
3 surplus to members?

4 A. Yes.

5 Q. In the course of that discussion, did
6 you seek a legal opinion from Attorney Mark McCue?

7 A. Absolutely.

8 Q. And do you recall receiving a written
9 letter, Exhibit 381, outlining under 5-B what the
10 board could do?

11 A. Yes.

12 Q. Do you recall being given a legal
13 opinion first that you could return surplus
14 through rate crediting?

15 A. Yes.

16 Q. And had that been a practice of LGC or
17 its predecessors, HealthTrust, in returning
18 surplus?

19 A. Well, I can't say it was a practice,
20 because from the time I was there until then that
21 was the first time we had surplus. They did return
22 surplus just before I came on board, or when I was
23 coming on board in the term -- and they returned it

1 the same way that they returned surplus from PLT,
2 that was through dividends.

3 Q. When you say PLT, you mean Property and
4 Liability Trust?

5 A. Property and liability, sorry. And we
6 were told by the members, don't ever do that one
7 again to us.

8 Q. Let's digress for a minute. Why? Why
9 were the members telling you don't return money
10 like that to us again?

11 A. Well, when it's property liability --
12 or workers' comp., but we'll still with property
13 liability -- it is the employer, or the town or
14 school, that is paying the full freight of the
15 bill.

16 So when you get a dividend back,
17 usually you're asked by whether it's Primex -- I
18 believe they still do it, or LGC -- would you like
19 it as a rate credit towards next year, or would you
20 like a dividend refund check now, and depending on
21 your budget situation, you pick whichever one was
22 advantageous to you.

23 When it's health, predominantly -- it

1 wasn't everybody, but predominantly -- there is a
2 component that the employee is contributing usually
3 through payroll deduction a portion of the health
4 insurance premium. The check, of course, goes from
5 the town of Londonderry or whatever up to LGC, and
6 then it's reimbursed through payroll deductions for
7 whatever negotiated rate each employee pays.

8 So when that comes back in that form,
9 the school district or town or whatever has to then
10 go through a minutiae of calculations and determine
11 what employees get what small dollar amount, and in
12 this case issue about 150 checks for small dollars
13 to go back to the employees. That was one of the
14 reasons that the members said that's -- that's not
15 going to help us.

16 The other area is they would -- they
17 would much rather have it as a rate reduction or
18 stabilization the following years to avoid what's
19 termed as spikes in the -- in the rates. And that
20 makes it a whole lot easier for whether your town
21 managers, selectmen, school boards in the budgeting
22 process going forward and going forward.

23 Q. If you can explain to Mr. Mitchell how

1 those spikes would occur if you just gave the
2 money back.

3 A. I'll use the example, and I'll be
4 simple. I'm looking at trend and not actuals, if
5 that's okay.

6 THE PRESIDING OFFICER: It's not a
7 difficult concept. Proceed in any way you want.

8 THE WITNESS: Okay.

9 A. Let's assume that your premium is one
10 dollar, and medical claim, we'll leave everything
11 alone, is 10 percent. So your claim -- your
12 premium should go to a dollar ten. If you give, in
13 this case, a hundred percent of whatever surplus
14 back one time, your rate then could drop to, let's
15 say 95 cents, again, depending on trends.

16 What happens then is -- and for most
17 municipalities, and even in worst case the smaller
18 ones where health is a much larger percentage of
19 the budget -- the tax rate then drops
20 significantly.

21 Now, that's great for the taxpayers for
22 that year, except if it drops significantly, what
23 would happen is taxpayers will get phone calls for

1 the escrow to be adjusted, and that's the worst
2 thing that anybody ever wants.

3 Then the following year, if medical
4 trend again stays the same, let's say the premiums
5 are going to a dollar 20. Well, now you're at 95
6 cents, you've got to go to a dollar 20, you're
7 going to have a huge spike in your health insurance
8 to calculate a normal trend, a normal increase in
9 health, plus the article reduction, on -- you know,
10 on the surplus going forward. So you've got to go
11 from 95 to a dollar 20 in one year.

12 Again, it sends ripples through the
13 budgeting process of towns and school districts,
14 and if it's large enough, that same household will
15 get another phone call saying that your escrow
16 account is being adjusted again.

17 What they would like is I understand
18 that I want the best product for the best price, I
19 understand I want the health insurance as cheap as
20 possible, but if you could smooth this thing so
21 there's minimal increases along the way, our
22 life -- our life being budgets, municipal budgeting
23 and finance people -- is a lot easier to handle.

1 Q. And did you receive then a legal
2 opinion from Attorney McCue that stabilizing the
3 rates in that manner, giving the contribution back
4 in terms of a rate credit, was lawful under 5-B?

5 A. Yes.

6 Q. And did you receive -- strike that.
7 And did you receive a legal opinion from
8 Mr. McCue -- from Attorney McCue that not just the
9 concept of rate stabilization, but spreading that
10 out over more than one year was also lawful under
11 5-B?

12 A. Yes.

13 Q. And did you as a board member rely on
14 that legal advice in making your decision to
15 return surplus in that manner in and around 2007?

16 A. Absolutely.

17 THE PRESIDING OFFICER: Do you need a
18 recess, Mr. Howard?

19 MR. HOWARD: I don't, I'm ready to move
20 on.

21 THE PRESIDING OFFICER: All right.

22 MR. HOWARD: Is it possible,
23 Ms. Worthen, to put BSR Exhibit 1 up on the

1 screen?

2 MR. SATURLEY: Here, use mine.

3 BY MR. HOWARD:

4 Q. Mr. Curro, can you see the chart well
5 enough?

6 A. Yup.

7 Q. And this is a chart that I reviewed
8 with you on a prior occasion, do you recall that?

9 A. Yes.

10 Q. We've looked at this chart before. You
11 understand that over the course of this ten-year
12 period the blue lines are member contributions?

13 A. Yes.

14 Q. And have you -- I'm sure you have heard
15 of this in your profession, what's meant as
16 numbers on an accrual basis?

17 A. Yes.

18 Q. And what does that mean, say, for
19 example, in 2002 if this number was on an accrual
20 basis?

21 A. You're capsulizing the 12 -- the period
22 of time, not just actual numbers that appear.

23 Q. That were in for that -- that reporting

1 period --

2 A. Yes.

3 Q. -- 2002? And this number here which is
4 laid out as paid claims.

5 A. Yes.

6 Q. What is a cash basis?

7 A. Those would be actual claims that have
8 come in and have been booked on LGC's system as a
9 cash process.

10 Q. So if this number is done on a cash
11 basis, is it fair to say that this number does not
12 include claims that may have been at the end of
13 the year but not paid in that year?

14 A. Yes.

15 Q. Now, this green space right here is
16 called claims reserves. Do you know what that
17 encompasses?

18 A. Well, I would call it -- if it's what I
19 think it is, I would call it -- or have been told
20 incurred but not reported, or I think the acronym
21 is IBNR.

22 Q. The IBNR. From your understanding, is
23 IBNR an asset or a liability of the company?

1 A. Well, a reserve for claims of IBNR is
2 an asset. If the blue or black line is cash, then
3 if you go to do it that way, you should have a
4 contra transaction on top of your black line, an
5 offset equal to your line -- your line column
6 there.

7 Q. So if this is cash --

8 A. Yes.

9 Q. -- and the IBNR is put here, it also
10 needs to be put over on this line --

11 A. Yes.

12 Q. -- shown essentially as a liability?

13 A. Correct.

14 Q. All right, thank you. Mr. Curro, a
15 final question. Throughout your lengthy tenure
16 with either HealthTrust and then LGC, Inc., do you
17 have a view of whether you and the board has
18 exercised its best business judgment in making its
19 decisions for LGC, Inc. and HealthTrust in the
20 best interest of the entities and its members and
21 in compliance with your fiduciary duties?

22 A. I think we always do that.

23 MR. HOWARD: Thank you, Mr. Curro.

1 I'll defer to other attorneys.

2 THE PRESIDING OFFICER: Mr. Gordon,
3 anything?

4 MR. GORDON: No.

5 THE PRESIDING OFFICER: Mr. Saturley,
6 anything?

7 MR. SATURLEY: No, thank you,
8 Mr. Mitchell.

9 THE PRESIDING OFFICER: Given the hour,
10 Mr. Volinsky, why don't we take our midmorning
11 break now, and then you'll have the witness on
12 cross-examination.

13 (Recess taken.)

14 THE PRESIDING OFFICER: Good morning,
15 ladies and gentlemen. We've returned from the
16 midmorning break. Mr. Curro is on the stand, and
17 Mr. Volinsky is about to begin his
18 cross-examination. Mr. Volinsky, please.

19 MR. VOLINSKY: Thank you.

20 THE WITNESS: Good morning, sir.

21 CROSS-EXAMINATION

22 BY MR. VOLINSKY:

23 Q. Good morning. I'm going to be brief,

1 ask you about topics and change, and I'll try and
2 let you know when we're changing topics.

3 A. Thank you.

4 Q. First, you described this morning in
5 response to Mr. Howard's questions a meeting
6 someplace in Manchester where the three individual
7 boards came together and then eventually voted to
8 go through a reorganization, do you remember that?

9 A. Yes, for that joint committee, yes.

10 Q. Yes. And am I right to understand that
11 each board had its own room in whatever facility
12 this happened to be?

13 A. Correct.

14 Q. And was that so that each board could
15 speak confidentially about the issues with that
16 were at hand --

17 A. Yes.

18 Q. -- to be voted on? And was that also
19 so each board could make its own decision based on
20 the interest of the members of that particular
21 pool?

22 A. Correct.

23 Q. And you happened to be at that time on

1 the HealthTrust board?

2 A. Yes.

3 Q. And so you were in having these private
4 discussions with other HealthTrust board members?

5 A. Yes.

6 Q. And Property Liability Group had its
7 own room with its board members, correct?

8 A. Yes.

9 Q. And then --

10 A. NHMA.

11 Q. -- was the third one NHMA?

12 A. Yes.

13 Q. The lawyer for HealthTrust at that
14 meeting was Bob Lloyd, was it not?

15 A. Yes.

16 Q. Switching topics. You said that you
17 initially joined the HealthTrust board at the
18 request of a staff person, and I think you said
19 you can't remember if it was John Andrews or Wendy
20 Parker.

21 A. Yes.

22 Q. But it was one of the two of them?

23 A. Yes. I'm sorry.

1 Q. Later on after the reorganization when
2 you were the LGC board, did you have times when
3 board members left before their term had expired?

4 A. Yes.

5 Q. And did John or Wendy go through a
6 similar process of identifying someone, having
7 them come on the board for the unexpired term, and
8 then subject them to a vote after that term?

9 A. Yes.

10 Q. Do you have a recall of how many that
11 would have happened with as a member of the LGC
12 board?

13 A. How many?

14 Q. Yes.

15 A. I can't tell you how many. I can give
16 you an example like if somebody is an elected
17 official, let's say of the school board, and
18 they're on as the school board member from
19 Londonderry -- we'll use Londonderry -- and that
20 person either doesn't get elected or didn't run,
21 that person's term is going to be filled by
22 somebody. So that's usually what happens, or if
23 somebody changes jobs.

1 Q. Got it. And in those circumstances,
2 Wendy or John or some other staff person would
3 bring in the replacement, the board would approve
4 it, and then there wouldn't be a member vote until
5 the next official term began, right?

6 A. Yes.

7 Q. Switching topics. You gave testimony
8 this morning that your board considered Primex to
9 be engaging in the process of denying workers'
10 comp. claims so that HealthTrust would become
11 responsible for insuring medical costs.

12 A. Yes.

13 Q. Do you remember that testimony?

14 A. Yes, I do.

15 Q. Are you suggesting that Primex engaged
16 in some kind of fraud in that regard?

17 A. No, sir, I wouldn't say fraud, but they
18 would deny -- and I'm speaking more not as a board
19 member but as a participant or a buyer of
20 insurance, where it was frustrating to submit
21 workers' comp. claims and then constantly getting
22 them denied and denied.

23 And some were legitimate, some were

1 correct, it wasn't a workers' comp. issue, but some
2 of them were clearly a workers' comp. and they
3 would deny it and then go over -- as I said, it
4 would go to the health insurer, whether it was LGC
5 or if Manchester was self-insured or whatever.

6 Q. So let's put aside the claims that
7 Primex denied on which you agree their denial was
8 appropriate. The ones with which you have a
9 difference of opinion with Primex about their
10 denial, is it your testimony that the denials were
11 illegal?

12 A. Can I use the word inappropriate?

13 Q. Only if you explain what you mean by
14 it.

15 A. I don't know the legality -- I don't
16 know the whereabouts of the legality of denying the
17 claims. I can say that they were denied in hopes
18 that it would go someplace else. So I can't -- I
19 don't know the legality of a workers' comp. claim
20 being denied or not.

21 Q. Fair enough, thank you. This timeframe
22 when you were having this concern about Primex
23 denying claims, to use your term, inappropriately,

1 was Liberty Mutual then in the market with public
2 entities for workers' comp.?

3 A. I don't remember, I'm sorry.

4 Q. Can you remember any of the names of
5 the private insurers in the market for workers'
6 comp. during the timeframe you mentioned?

7 A. No, I can't.

8 Q. You remember there were some?

9 A. There were some, yes. And I think the
10 attractiveness of the risks pools, being Primex or
11 LGC, was not only the coverage but the training
12 programs and so forth that goes with those
13 coverages.

14 Q. I understand. Well, are you saying a
15 Liberty Mutual workers' comp. doesn't provide risk
16 management assistance to its insureds?

17 A. They might, but it's not tailored
18 specifically to the needs of a school or a town.

19 Q. Okay. You were -- switching topics.
20 You mentioned that with respect to the strategic
21 plan contributions that there was some kind of a
22 deduction of employee portions of health premiums
23 before the strategic planning contributions were

1 made?

2 A. Yes.

3 Q. Do you know that there was a right to
4 know request made asking for that calculation of
5 how much was accorded the employee share, and the
6 LGC's response was we've lost the calculation,
7 we'll describe it for you in response instead?

8 A. I can't say I know of that particular
9 right to know request. Certainly as a board member
10 I know there were a lot of right to know requests
11 coming -- coming forward.

12 Q. Let me refer you to book 1, Exhibit 18.
13 You can familiarize yourself with the entire
14 letter, and then there's an attachment to the
15 letter, as much as you want, but I'll tell you
16 that I'm only going to ask you about the third
17 paragraph on page 2 of the letter. So look at as
18 much as you want, and then just look up when
19 you're ready.

20 A. And that starts with "with respect to"?

21 Q. Yes.

22 A. Okay.

23 Q. And do you see the second sentence in

1 the paragraph I identified for you there's the
2 sentence, unfortunately, almost no documentation
3 exists from the calculation conducted in 2004?

4 A. Yes.

5 Q. 2004 was the first year of the
6 strategic plan contributions, right?

7 A. Close enough, yes.

8 MR. VOLINSKY: I move to strike the
9 identification on 18 and move it into evidence.

10 MR. HOWARD: No objection from
11 Mr. Curro.

12 THE PRESIDING OFFICER: No objection
13 being seen from either Mr. Gordon or Mr. Saturley,
14 it's stricken and admitted, that is BSR 18 is a
15 full exhibit.

16 MR. VOLINSKY: Thank you.

17 (BSR Exhibit 18 was entered into evidence.)

18 BY MR. VOLINSKY:

19 Q. Switching topics.

20 A. Do you want this book back?

21 Q. You can just push it forward so it's
22 out of your way.

23 A. No, it's no problem. Thank you.

1 Q. Switching topics. You talked in
2 response to Mr. Howard's questions about comments
3 received in response to cash dividends being
4 granted or return surplus, do you remember those
5 comments?

6 A. For health.

7 Q. For health, yes.

8 A. Yes.

9 Q. And let's stay strictly on the health
10 side.

11 A. Sorry.

12 Q. When you worked for the town of
13 Derry --

14 A. Londonderry.

15 Q. -- Londonderry, sorry, employees left
16 year to year?

17 A. (Witness nods.)

18 Q. Yes?

19 A. Yes.

20 Q. Employees were hired year to year?

21 A. Yes.

22 Q. Employees under -- were they under
23 collective bargaining agreements at Londonderry

1 when you were on the town side?

2 A. Most of them; police, fire, highway.
3 All but, I'd say, senior level.

4 Q. When an employee, particularly one who
5 was under a collective bargaining agreement at the
6 town of Londonderry, had a responsibility to pay
7 part of his or her health insurance, that was a
8 deduction from their paycheck, right?

9 A. Payroll. Payroll deduction, yes.

10 Q. So whenever during the year that
11 premium had to be paid, there was a payroll
12 deduction from that employee, correct?

13 A. Yes.

14 Q. And I think you said that when you --
15 when you as LGC switched to rate crediting in
16 future years, that made it easier for the
17 administrative process of the towns who were
18 members, correct?

19 A. In several aspects, yes.

20 Q. And one of those aspects was that they
21 didn't have to then figure out -- the town didn't
22 have to figure out how much money to return to
23 each of the employees who had contributed during

1 the year in question, right?

2 A. Yes.

3 Q. And so to save that administrative
4 hassle, the town administrative personnel would
5 support and tell you they supported this rate
6 crediting process, correct?

7 A. Right, yeah.

8 Q. But when employees who are employed by
9 the town in one plan year leave the next year, or
10 even the year after that, and the rate credits
11 aren't applied to health premiums until two or
12 three years later, those departed employees don't
13 get the benefit of the return of surplus, do they?

14 A. The way you're describing it, yes,
15 you're correct. It would be one year after -- the
16 rate credit would be applied one year after the
17 surplus has been, as I said, determined,
18 calculated.

19 Q. So to the extent the towns -- 80 or 90
20 percent was returned to the town, the town is
21 still a contractual party and gets the benefit of
22 the rate crediting, correct?

23 A. As well as the employees that are still

1 there.

2 Q. Right, but the departed employees lose
3 out?

4 A. Yes.

5 Q. The other point that you made with
6 respect to the rate credit instead of the dividend
7 dealt with spiking, right?

8 A. Correct.

9 Q. And I just want to ask you a couple of
10 questions about that. As a former town finance
11 person, you know that if money is not expended in
12 the town's budget in a particular year and it's
13 not committed to a special fund that's nonlapsing,
14 it goes to benefit the taxpayers on the next
15 budget, right?

16 A. Could, depending on their fund balance
17 policy of retained surplus.

18 Q. And if it goes to benefit the taxpayer,
19 as you admit it could, that means that the
20 taxpayers' taxes would be lower the following
21 year?

22 A. For that year, yes.

23 Q. And by using rate crediting for those

1 towns that ordinarily would have their taxpayers
2 get the benefit all in the next year, those
3 taxpayers don't receive the benefit all in the
4 next year, right?

5 A. Well, the taxpayers would get the
6 credit, the adjustment in their property taxes via
7 the reduction in the premiums being charged.

8 Q. But you do the premium crediting on a
9 three-year basis at LGC health, right?

10 A. No, we do -- the rating of premiums is
11 on an annual basis.

12 Q. Right, but when you set a practice of
13 returning the surplus through rate credits, you
14 don't return the entire surplus in the very next
15 year's premium, you do it over multiple years,
16 right?

17 A. Yes. Okay.

18 Q. That's all I'm trying to ask about.

19 So --

20 A. So for those three years, the premiums
21 paid by the Local Government would be reduced by X,
22 whatever X is.

23 Q. Right.

1 A. And then subsequently through the
2 budget process.

3 Q. Got it. Now I follow what you're
4 saying. Thank you. When you were town finance
5 administrator at Londonderry, did the town have a
6 town manager?

7 A. Yes.

8 Q. Do you remember who it was when you
9 were there?

10 A. Jared Clark was first, and then Richard
11 Plant when Jared left.

12 Q. When Jared was in place and there was a
13 health insurance contract to be signed, was Jared
14 the signatory, or was it the board that signed?

15 A. I think it would have been Jared. I
16 think the board would have been informed that we
17 have our plan with X person.

18 Q. And the same true -- was true with
19 Richard when he was in place?

20 A. Yes.

21 Q. Okay. The decision to go with a
22 particular insurance carrier, although Jared might
23 have been the signatory, was the board of

1 selectmen's decision, correct?

2 A. Yes, it would be funneled up and
3 recommended usually by the finance director of
4 municipalities or business administrator of
5 schools.

6 Q. Right, so you --

7 A. Through the process, I mean an RFP
8 process or so forth.

9 Q. You actually jumped to my next
10 question.

11 A. I'm sorry.

12 Q. No, that's fine. As a finance
13 director, your authority in choosing a health plan
14 was to make a recommendation, not a selection,
15 correct?

16 A. Yes.

17 Q. And as a business administrator on the
18 school district side, your authority is similarly
19 to make a recommendation, not a selection?

20 A. I would say yes.

21 Q. Okay, thank you.

22 MR. VOLINSKY: Let me just check one
23 thing, I think I'm done.

1 I am. Thank you.

2 THE PRESIDING OFFICER: Thank you,
3 Mr. Volinsky. Anything, Mr. Howard?

4 MR. HOWARD: If I may just ask one
5 question.

6 THE PRESIDING OFFICER: Surely.

7 REDIRECT EXAMINATION

8 BY MR. HOWARD:

9 Q. Mr. Curro, you were asked some
10 questions about in the rate credited process --
11 rate crediting process, whether members who had
12 left the plan get the benefit of that rate credit.

13 Would you agree with me that those who
14 have left the plan are no longer participating
15 members?

16 A. Yes.

17 MR. HOWARD: Thank you.

18 THE PRESIDING OFFICER: Mr. Gordon,
19 anything?

20 MR. GORDON: No.

21 THE PRESIDING OFFICER: Mr. Saturley,
22 anything?

23 MR. SATURLEY: Thank you, Mr. Mitchell,

1 no questions.

2 THE PRESIDING OFFICER: Mr. Curro,
3 thank you very much for the information that you
4 provided to me, and you are excused.

5 THE WITNESS: Thank you very much.
6 Thank you.

7 THE PRESIDING OFFICER: It's my
8 understanding that the evidence is closed at this
9 point, but that we have a couple of motions that
10 are being reiterated at this time similar to
11 earlier motions otherwise stated, and for that
12 purpose I'll first recognize -- gentlemen, have
13 you decided on an order?

14 MR. HOWARD: We haven't decided on an
15 order. I'm happy to go first.

16 THE PRESIDING OFFICER: If you'd like
17 to, by all means.

18 MR. HOWARD: As soon as I can find the
19 piece of paper I need to do it.

20 THE PRESIDING OFFICER: We could put
21 Mr. Saturley in the first place if you want,
22 Mr. Howard.

23 MR. HOWARD: Well, I only have one

1 piece of paper I need to find; I can't seem to
2 find it.

3 THE PRESIDING OFFICER: Okay, then
4 Mr. Saturley, would you please make your motion at
5 this time? Briefly.

6 MR. SATURLEY: Yes. Thank you,
7 Mr. Mitchell; thank you for your opportunity to
8 make this motion. On Monday in your ruling on the
9 prior motions following the close of BSR's case
10 you said you would allow this opportunity for
11 further motions, and we appreciate it.

12 I rise on behalf of LGC to make a
13 motion to dismiss these proceedings now that all
14 the evidence is concluded and that you are
15 reviewing the evidence on a preponderance of the
16 evidence standard.

17 Very briefly, I incorporate both the
18 arguments that we've made as a matter of law with
19 regards to the charges, and the arguments that we
20 made last Friday at the close of the bureau's
21 case. And just briefly to reiterate.

22 With regards to count 1, which is the
23 bureau's argument is that the corporate structure

1 of LGC violates RSA 5-B, the evidence before you
2 is the statute, the evidence of the merger that
3 took place, the corporate reasons for doing so and
4 the exercise of the board's business judgment in
5 determining what to do. No expert for the BSR has
6 appeared to criticize it as such on the law.

7 You've heard from Mr. McCue and Mr.
8 Samuels with regards to both the reasons and their
9 opinions concerning the law, the statute, and the
10 interaction between the same, and their conclusion
11 that the corporate structure is entirely compliant
12 with 5-B. I would argue that both the state of
13 the law and the state of the evidence supports a
14 dismissal of the charges on count 1.

15 With regards to count 2, the charge
16 that the failure to return surplus is a violation
17 of 5-B, I would again point you to the statute
18 which gives very limited guidance to the board.
19 Basically it says surplus in excess of reserves,
20 there is no rules that exist on the topic, there
21 were multiple concessions by the bureau's experts
22 and their employees with regards to the
23 documentary evidence that the statute is vague,

1 and that a board under these circumstances must
2 make its own judgment. That was multiple times
3 conceded by the experts.

4 The evidence is that this board did so
5 consistently. There has been no criticism offered
6 at all of the method or the process that they
7 followed in doing so. There has only been
8 suggestions that another policy result could have
9 been reached.

10 Again, I incorporate the arguments
11 already made demonstrating the concessions that
12 this was left to the board of directors to
13 determine the level of reserves and the projected
14 need for the plan and their actions consistent
15 with that judgment.

16 With regards to the securities,
17 multiple evidence exists that this is a charge
18 that is basically out of the blue. The
19 preponderance of the evidence as it exists before
20 you is that these are not securities.

21 The Howey test fails on three out of
22 four counts. The bureau's expert opinion was
23 clever, but I would say not really directed to the

1 evidence, and not really an opinion that complies
2 with what must be offered to you to support a
3 charge with regards to the evidence.

4 No deference is entitled to be given to
5 the bureau on this particular evidence. With
6 regards to the interpretation, no rules exist on
7 this standard and on the law. I suggest that any
8 result other than a finding that this board has
9 acted particularly well under the circumstances
10 that exist with regards to the law and the facts,
11 and that any judgment other than that their
12 actions have been explicitly good on behalf of the
13 members, that it had saved taxpayers money will
14 discourage future service and will result in just
15 something that discourages future service by board
16 members, and results in cost to the taxpayers of
17 the state, and ultimately lacks common sense.

18 For all of those reasons I ask that
19 your result at this time be to dismiss the
20 charges. Thank you.

21 THE PRESIDING OFFICER: Thank you.
22 Mr. Volinsky, we'll wait until all the motions are
23 in, and then you may be heard. Mr. Gordon.

1 Briefly, sir.

2 MR. GORDON: I will be brief, I trust.
3 I'll discuss count 1 and count 2 collectively.
4 The counts go to, in essence, four discrete
5 issues, as I read them; corporate structure,
6 return of surplus, workers' comp. decision, and
7 strategic funding with regard to that, and the
8 setting of the RBC levels. Those are what I'll
9 say are the four discrete subjects.

10 And the evidence in this case is that,
11 historically speaking, each one of those decisions
12 were made prior to Ms. Carroll becoming executive
13 director. They were made by the board pursuant to
14 its duties and responsibilities under the bylaws,
15 and were totally consistent with RSA 5-B, which is
16 also a duty and obligation of the directors under
17 the bylaws. Those decisions were in place prior
18 to her appointment at the time in September of
19 2009.

20 At the time of her appointment in 2009
21 this investigation had already begun, and at that
22 time she was following advice of counsel in the
23 approach to be taken to the BSR's investigation

1 and relied upon that counsel in her capacity as
2 executive director.

3 The idea to me, and under the law, that
4 an executive director needs to obtain independent
5 legal counsel in order to rely on reliance of
6 counsel defense is contrary to long-standing law
7 in this country. I will cite to you the Upjohn
8 case where the Upjohn decision allowed for core
9 group members to have the benefit of the
10 attorney/client privilege, and correspondingly
11 advice of counsel.

12 If a decision is made that each and
13 every board member or executive director needs to
14 obtain their own legal independent counsel in
15 order to rely upon the reliance of counsel
16 defense, then the structure of our voluntary
17 boards in New Hampshire would be dramatically
18 changed, because every director would want to have
19 independent counsel at every meeting to assure
20 himself or herself that their interests are
21 protected. There is no basis in the law for that.
22 And I can also cite to the court another case
23 which is US versus Skilling that confirmed that

1 interpretation.

2 I also need to point out that in counts
3 1 and 2, or principally count 2, there was a
4 villianization of the board by suggesting that the
5 purpose and intent of many of their decisions was
6 a war against Primex.

7 We just saw a witness who was on the
8 board at that time who provided three discrete,
9 independent, good-faith reasons as to why the
10 decisions were made that were made.

11 There was an opportunity for
12 cross-examination, an opportunity to go into those
13 decisions, to demonstrate that those decisions
14 were made in bad faith, and none were taken,
15 confirming, by the absence of those questions that
16 a charge that these decisions were made in bad
17 faith in violation of fiduciary duties did not
18 exist.

19 I want to go to the securities count.
20 The suggestion that has been made is that
21 Ms. Carroll was negligent, that she failed to use
22 reasonable care. And the general instruction in
23 the state of New Hampshire is reasonable care is

1 the degree of care an ordinary, prudent person
2 would use under the same or similar circumstances.

3 We have had three experts -- I will
4 include Attorney Loughlin as well, who has been
5 representing municipalities for almost his life,
6 he never considered or thought that these
7 agreements, participation agreements were
8 securities.

9 We had Attorney Samuels, same thing,
10 and testified that these were not securities, and
11 we had Attorney Murphy who testified. And I think
12 that one of the questions that I remember the most
13 is you asked him would you have expected an issue
14 spotter to have spotted this issue, and he said he
15 never would have spotted the issue.

16 And if Attorney Murphy could not have
17 spotted the issue, then how is Ms. Carroll
18 expected to have spotted the issue when no one
19 ever suggested that these were securities. Bear
20 in mind that the BSR has had security enforcement
21 powers for many, many, many, many years.

22 They had the authority to bring an
23 enforcement action against these participation

1 agreements prior to 2009. If they were securities
2 for all this time, the BSR had full power and
3 authority to bring an action for violation. They
4 did not do so.

5 The record also shows in December of
6 2009 the BSR had this participation agreement
7 before it. If issue spotting is somehow relevant,
8 then the BSR had 20 months -- 20 months -- to spot
9 the issue. The first time we knew that there was
10 a contention that these were securities was in
11 August of 2011.

12 There has been no evidence against
13 Ms. Carroll. As I stated before, and I am soon to
14 end -- that she directed the board with regard to
15 the management of funds, she directed the board
16 regarding the corporate structure, she directed
17 the board regarding strategic funding, she
18 directed the board regarding workers' comp.

19 There is absolutely no evidence against
20 that -- to support that -- and there is no
21 evidence that she materially aided in any way
22 false statements, and I suggest that the case be
23 dismissed against her. Thank you.

1 for the acts of two other independent parties. He
2 cannot be responsible for count 1, the corporate
3 governance count, when his contribution to this is
4 in no way significant, material, influential, or
5 consequential. So count 1 has to be dismissed.

6 With respect to count 2, I'm going to
7 focus, as I did on Wednesday, on the advice of
8 counsel. The Secretary of State, when it first
9 objected to my motion to dismiss on Friday based
10 on the advice of counsel defense said, well, you
11 can't do that, yet, Mr. Mitchell, because there's
12 been no testimony that Mr. Curro relied on that
13 advice of counsel.

14 After Attorney McCue testified that, in
15 fact, he provided and Attorney Lloyd provided that
16 advice of counsel, he testified that not only did
17 he provide the advice, he understood that the
18 board relied on that advice, and at no time in his
19 memory did the board ever act contrary to his
20 legal advice.

21 When I made that motion on Wednesday,
22 the Secretary of State stood up and said, we still
23 don't know, first of all, whether Mr. Curro

1 would -- relied on that advice. His testimony
2 here today is uncontradicted with a full
3 opportunity to cross-examine him on legal advice,
4 the Secretary of State passed up that opportunity.
5 The state of the record is it is uncontradicted
6 that he relied on the advice of counsel to the
7 board in acting in his capacity as a board member.

8 On Wednesday the bureau took the
9 position that -- and I quote from page 31 of the
10 transcript -- Mr. McCue did testify that in his
11 one and only client related to this dispute was
12 the Local Government Center. He did not represent
13 Maura Carroll, he did not represent Peter Curro.

14 And then the Secretary of State takes
15 this position, it would be unusual for a lawyer
16 who doesn't represent individuals to provide legal
17 advice to them.

18 You might recall that I stood up and
19 said, this schizophrenic theory about whether I am
20 here as an individual or here as a representative,
21 they keep going back and forth. And I said if I'm
22 here as an individual, let me know that, but they
23 seem to be saying now I'm here as a representative

1 of a board that cannot rely on its own counsel's
2 advice.

3 And then they go on to say and suggest,
4 and I think that corporate practitioners in this
5 state need to know that the administrative agency
6 that controls corporations is now taking the
7 position as a matter of law that individuals who
8 serve on board of directors must have their own
9 lawyers in the room to advise them on legal
10 matters upon which they are acting in order to be
11 able -- in order to have the right to rely on that
12 advice later. That, I would suggest to you, every
13 practitioner in corporate law in this state is a
14 sea change in the state of the law.

15 Of course a member of the board of
16 directors gets to rely on the advice that a lawyer
17 is providing to that board. Of course a member of
18 the board of directors does not have to have his
19 individual lawyer in the room. The Secretary of
20 State took the position on Wednesday that
21 apparently they do. That is an odd position to
22 take.

23 Nevertheless, the evidence in this case

1 is that it is uncontradicted in Mr. Curro in every
2 instance that's alleged in the petition about the
3 board relied on advice of counsel, so count 2 must
4 be dismissed.

5 With respect to the securities, there's
6 no question that these are not securities. The
7 only person who came in here to testify from a
8 member town that actually buys this insurance is
9 Mr. Curro. The bureau not only listed many people
10 from towns who they could have called to testify
11 whether those people thought they were investing
12 and expecting a profit from LGC; they chose to
13 call none of them. That alone says to you it's
14 because those people wouldn't say that.

15 Of course this is not an investment, of
16 course there is no expectation of profit, and
17 Mr. Curro in his capacity as a representative of
18 his town and school district that participates in
19 these pools says directly, no, I did not think
20 this was an investment, it's a purchase of
21 insurance.

22 No, we did not expect a profit, we are
23 buying an insurance policy. The benefit we get is

1 the benefit of insurance and the other services of
2 LGC, it was not done for expectation of profit.
3 Uncontradicted testimony, wasn't even questioned
4 about it on cross-examination.

5 I still think I'm not a party in count
6 3. I urge you to read it that way. I think
7 the -- the Secretary of State didn't necessarily
8 concede that, but certainly didn't make a very
9 strong argument that I belong in count 3.

10 In count 4 there's been no evidence
11 that Mr. Curro materially aided anybody or
12 anything in the sale of securities. There was an
13 opportunity to question him whether he approved
14 these participation agreements as a member of the
15 board; didn't even ask that question. We don't
16 know whether he was even involved in the creation
17 of the instrument, the approval of the instrument,
18 or the amendment of the instrument, he's simply on
19 the board.

20 Finally, Mr. Mitchell, I know that
21 you're going to want to take these under
22 advisement, you most likely will take them under
23 advisement, but I am going to ask you to do one

1 thing, and that is to rule now on count 5 with
2 respect to Mr. Curro.

3 Count 5 charges Mr. Curro with fraud,
4 deceit, and -- what's the other phrase that
5 Mr. Volinsky keeps saying I refuse to -- to
6 acknowledge -- material omissions of fact. The
7 fraudster, the deceitful person that has been
8 charged in this count sat right there for the last
9 two and a half hours. Mr. Volinsky didn't ask him
10 one question about it. Not one.

11 The person that the Secretary of State
12 of the state of New Hampshire, who says served on
13 this board for 16 or so years on a voluntary
14 basis -- and I think, Mr. Mitchell, you can't
15 conclude anything other than he is a committed,
16 highly competent, highly qualified member of that
17 board who knows this business as well as anybody
18 and better than most -- the Secretary of State
19 still insists that he is a fraud.

20 There is absolutely no evidence of that
21 that's been adduced in this hearing whatsoever.
22 No evidence that he materially omitted any
23 information to any participating member. In fact,

1 he is the representative of one of the
2 participating members, the Londonderry School
3 District.

4 He deserves, given his work with this
5 entity, with this pool, and his commitment to the
6 members of that pool, he deserves a ruling today
7 at least on count 5 that he is not a fraud, he is
8 not deceitful, and he didn't materially omit any
9 information with respect to the member
10 participation in these pools. I think he's earned
11 that. Thank you, Mr. Mitchell.

12 THE PRESIDING OFFICER: Mr. Howard.
13 Mr. Volinsky.

14 MR. VOLINSKY: Thank you. On behalf of
15 the bureau, I adopt all of the prior comments made
16 in objection to prior motions to dismiss and will
17 not repeat them here. I also will not engage in
18 an effort to characterize the evidence by
19 excluding significant portions of it.

20 As my experienced colleagues know, I
21 need not ask a particular witness about his
22 opinion about anything if the evidence is already
23 in the record. And we know from prior evidence

1 that the board approves the participation
2 agreements in evidence, I do not need to ask
3 Mr. Curro if that is true, it is in the record and
4 unrefuted.

5 I do not need to ask Mr. Curro his
6 opinion on whether participation in a risk pool is
7 an investment because, as Mr. Curro admitted in
8 his testimony, he is not the decision-maker on
9 purchasing insurance either when he was at the
10 Londonderry town or where he is presently at the
11 Londonderry School District. Those
12 responsibilities fall to the respective boards of
13 selectmen and school boards, and perhaps to the
14 town administrators. So although he may have an
15 opinion, he is no more than a recommender.

16 This hearing officer will make a number
17 of findings directly and implicitly on issues of
18 credibility, and just because a particular witness
19 says it's so does not make it true.

20 We have eight or ten boxes of documents
21 that you have already begun to carefully go
22 through, and will complete that process as you
23 reach your decision. I would point out that many

1 of the points of testimony offered by LGC
2 witnesses have been refuted by their own
3 documents.

4 So, for example, when Mr. McCue
5 testified that member Karen Liot Hill was an
6 aberration and ill informed, the fact that the
7 next summer's retreat resulted in her appointment
8 to a very important communications committee
9 undermines his oral testimony.

10 When Ms. Carroll testifies when looking
11 at page 1 of that retreat minute that there were
12 no problems with board engagement, which the LGC
13 has made an issue in this matter, only to find
14 that when she flips the page, Exhibit 66 moving
15 from page 605 to 606, and sees there in writing
16 stark, clear, in black and white the priority
17 coming from that retreat was to improve board
18 engagement to disallow some matters such as being
19 on cellphones and computers during meetings, it is
20 hard to argue that she was not credible when she
21 claimed no problems with board engagement.

22 On the issue of -- well, actually two
23 issues. With respect to Ms. Emery. Ms. Emery's

1 testimony crystallized two points for us, and I
2 want to call them to your attention, you'll see
3 them in the transcript.

4 I hope you will recall when I asked
5 Ms. Emery could you if given access to data
6 calculate what the net assets should be for
7 HealthTrust, and twice she avoided answering the
8 question by saying that's not my decision, that's
9 the board's decision. Eventually she said, yes, I
10 can calculate that.

11 That shows two things. One, it's an
12 admission that people who are knowledgeable can
13 calculate a precise amount of net assets that are
14 necessary to be held by an organization like
15 HealthTrust. No one on the LGC side has come
16 forward and said I did this calculation which
17 resulted in this number.

18 Riemer, if you will remember, testified
19 that he described the process and then allowed the
20 board to choose. No one on the Local Government
21 Center made that calculation. We have offered you
22 four different ways to get to a calculated net
23 asset which is -- which -- any of which are

1 reasonable.

2 There's the NAIC approach, there is the
3 stochastic modelling offered by Mr. Atkinson,
4 there is the investment reductions model offered
5 by Mr. Cuotu, and, finally, there is their own
6 analysis by Peter Riemer which calculated that
7 they were at 2.1 RBC at the time they decided to
8 build a war chest. So that's four different ways
9 to come to a calculation somewhere between 2.0 and
10 2.4. We recommend those to you.

11 That leads to the second point -- well,
12 let's stay on this first point. The difference in
13 approach here is stark. The Local Government
14 Center and the other respondents say this is
15 purely a business judgment, and therefore you
16 should only be concerned with us having a fair
17 process.

18 The bureau, on the other hand, while
19 challenging their process, more importantly says,
20 there is a standard here, this is not pure board
21 discretion. That standard is you must return
22 earnings and surplus excess of operations. In
23 order to do that, you have to figure out what's

1 needed and what's excess, and no one for LGC did
2 that, and they can't avoid the standard by saying
3 we talked robustly about this topic. Ms. Emery's
4 testimony makes clear that distinction.

5 Ms. Emery also contributed to our
6 understanding on the securities issue. She's a
7 person who is very knowledgeable about risk pools,
8 and in her testimony in the rough transcript at
9 141 she was asked to contrast purchase of private
10 insurance by a municipality versus participation
11 in a risk pool.

12 And she was asked by the LGC lawyers,
13 and so in contrast with insurance if I signed up
14 with a commercial insurance and I write a check,
15 and what did you say if I do, well, then what
16 happens? Answer, if you don't have losses, they
17 win; you don't get your money back.

18 Question by Mr. Saturley, and contrast
19 that with a risk pool. Answer, if you don't have
20 losses, it's held onto by the risk pool. It
21 builds capital and surplus which provides comfort
22 and security to you. It can, that capital and
23 surplus, can help drive lower ongoing costs. You

1 can better negotiate reinsurance, et cetera.

2 Ms. Emery makes clear that in both
3 instances, the party, the municipality wants
4 insurance, but the decision-making point between
5 going private versus going risk pool is purely
6 financial. One you pay your premium and you give
7 away the money for the service; the other you have
8 the chance of doing well and depressing premium
9 costs, and that's a pure financial interest, and
10 that makes out the securities claim.

11 For those reasons, and all the other
12 reasons that have previously been cited to you,
13 I'd ask that you deny the motions to dismiss. We
14 appreciate the time you've put into this matter.
15 There was a motion that I made this morning that
16 you didn't rule on, so I'm going to want to ask
17 you to do that, but I'll allow further comment on
18 these motions, if you prefer.

19 THE PRESIDING OFFICER: Refresh my
20 recollection, Mr. Volinsky.

21 MR. VOLINSKY: Yes, sir. This morning
22 I said that the reason we go into June is because
23 Mr. Quirk asked us to use a June 4th date --

1 THE PRESIDING OFFICER: Okay, you
2 refreshed my recollection. That had to do with
3 altering the schedule.

4 MR. VOLINSKY: Yes, sir.

5 THE PRESIDING OFFICER: For
6 post-hearing submissions.

7 MR. VOLINSKY: Yes, sir.

8 THE PRESIDING OFFICER: I understand
9 you've made that motion. I understand what the
10 objection was from this morning, and that's fine,
11 your comments are complete.

12 MR. VOLINSKY: Thank you.

13 THE PRESIDING OFFICER: I've heard the
14 arguments and presentations not unlike closings,
15 so I don't feel that I have any reason to keep the
16 evidence open at this time. I indicated I'd close
17 it when the evidence is closed.

18 With respect to these motions, I have
19 considered them, in fact considered them all
20 along, and I'm going to review and consider
21 further the evidence that I have before me.

22 I am going to take these under
23 advisement at this time to consider the record

1 with respect to the representations that have been
2 made, characterizing the evidence since the last
3 time these motions were made, my notes covering --
4 well, Mr. Howard, I think you reminded me that it
5 was Wednesday that you last made your motion.
6 I've certainly heard testimony, but there's been
7 almost 600 pages of transcript of recorded
8 dialogue in this matter since that time, and I
9 will consider that as carefully.

10 So with respect to the specific
11 requests on count 5, Mr. Howard, I'm taking that
12 under consideration with the others.

13 As we come to conclusion of these
14 proceedings, let me take care of a couple of my
15 own housekeeping matters, if you will.

16 First, I'd like to remind all counsel
17 and those who work with them of my earlier
18 protective orders as to the medical information
19 that may be in your hands as we come to a close in
20 this evidentiary phase of the proceedings.

21 That protective order also extended to
22 any information that may be in your hands, and,
23 again, I'll just direct you to the order, it's

1 much more detailed, but I'm just reminding people
2 as they leave that, you know, all those were
3 deputized, if you will, in the preparation and
4 participation of this hearing is to protect that
5 medical evidence, and also to protect any claims
6 analysis or claims management information that you
7 may have come into possession with as a result of
8 discovery or otherwise.

9 Thirdly, I want to remind all parties
10 that the litigation hold, so-called, and preserve
11 first agreement and then I think embodiment in an
12 order with respect to all the information
13 that was -- shall I say is related to these
14 proceedings, and my more recent order with respect
15 to holding and preserving the respective Facebook
16 postings and Twitter, and/or Facebook
17 communications, and any other similar social
18 network medium that has been used during these
19 proceedings, that is from its opening until I
20 declare them adjourned.

21 I will issue a further order in that
22 regard. With respect to schedule, by earlier
23 agreement of counsel, Mr. Ramsdell, you have

1 May 18 to substitute some copies for other
2 existing copies of the same exhibit.

3 It's my further understanding,
4 Mr. Volinsky, that you don't feel a similar need
5 to do so.

6 MR. VOLINSKY: No. Unless you would
7 like it, I would not intend to do so.

8 THE PRESIDING OFFICER: That's -- it's
9 your case. I have no preference, I'm going to
10 read it all anyhow, as I think you've all come to
11 know, for better for worse.

12 With respect to postsubmission briefs,
13 I believe that by agreement of counsel that you
14 agreed to keep your legal memoranda limited to 25
15 pages, and your respective responses to ten pages.

16 I'm going to continue with your agreed
17 schedule, which you agreed upon for June 4 for the
18 submission of legal memoranda, and June 7 for the
19 responses.

20 I also want to express specifically
21 appreciation to Brian Burford, who is our state
22 archivist, and this is his building, and as you
23 leave I would ask you to treat it as though you

1 were leaving a neighbor's home after a
2 get-together.

3 There is an enormous amount of material
4 here, and as it's removed by others at your
5 direction or request, please treat these --
6 specifically the wood tables very gently. And
7 there's none in this room at counsel table, I
8 don't believe, that haven't at one time or another
9 dragged a file with a paperclip underneath it or a
10 box with a paperclip underneath it, and I would
11 hate to see that mark on these tables.

12 Certainly, Ben Shoja, who some of you
13 have run into, is the tall gentleman with the dark
14 hair and has kind of, you know, allowed, by great
15 effort, this to go forward for all of us with as
16 little interruption and disruption as he could
17 possibly do.

18 You heard my comments to Mr. Tilsley
19 yesterday, counsel, and I direct this to you.
20 These have been long proceedings. By your age and
21 experience you represent, if you will, a
22 relatively select group of the New Hampshire Bar.
23 Your clients will be the final judge of how you

1 did here, irrespective of my decision.

2 I think it's important as we enter this
3 period of time where we have so many -- so much by
4 way of manner of communications that of all the
5 branches of government, as the judiciary, or in
6 this instance a quasi-judicial proceeding goes
7 forward, we will all have to pay particular
8 attention to keeping it as a judicial hearing
9 directed to hear the facts, apply the law, and
10 determine to the best of our abilities the truth.

11 This proceeding, given the nature of
12 the participants and the interest in this topic,
13 because the -- certainly the entities in
14 representing Local Government Center, through the
15 local governments represent an awful lot of
16 people.

17 The state in a similar regard represent
18 an awful lot of people out there who rely on us
19 and their elected representatives to act in a
20 representative capacity, and you all, if you will,
21 as advocates to represent those interests within
22 the limits of our rules of professional conduct,
23 and within the limits of your own judgment as to

1 what is the role as we go forward in these matters
2 of licensed attorneys, and what is the role of
3 elected officials.

4 To a great extent, the small P or large
5 P politics that may be interwoven with the
6 clients' situations have been kept out of this
7 room through these proceedings, and to that extent
8 I feel quite good as the presiding officer.

9 I hope as you move forward and as you
10 receive my decision that you will keep those
11 sentiments in mind. I, for the most part, have
12 been quiet for ten days, as I should be in my
13 role.

14 I will consider, obviously, now some
15 2,500 pages, I'm informed, of transcript, the many
16 exhibits I've referred to. I will issue a
17 decision in due course after all that evidence is
18 considered and I have applied the law to the best
19 of my ability.

20 I thank you for your attention, I thank
21 you for the courtesies you've extended to me; more
22 importantly, I thank you for the cooperation point
23 that we eventually got to among counsel that

1 allowed you to serve your clients by proceeding
2 with this in, shall I say, a timely fashion, and I
3 will say from my perspective, in as complete
4 fashion as the evidence would allow.

5 Thank you. These proceedings are over.
6 Adjoined would be the proper word.

7 (Whereupon at 12:19 p.m. the
8 proceedings were concluded.)

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1 C E R T I F I C A T E

2 I, Pamela J. Carle, Licensed Shorthand Reporter,
3 Registered Professional Reporter, and Certified
4 Realtime Reporter, do hereby certify that I reported
5 in machine shorthand the proceedings had at the
6 taking of the above-entitled hearing, held on the
7 11th day of May 2012, and that the foregoing is a
8 true, complete, and accurate transcript of said
9 proceedings as appears from my stenographic notes so
10 Taken to the best of my ability, and transcribed
11 under my personal direction.

12 I further certify that I am a disinterested person
13 in the event or outcome of this cause of action.

14 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES
15 NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY
16 MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR
17 DIRECTION OF THE CERTIFYING COURT REPORTER.

18 IN WITNESS WHEREOF, I subscribe my hand and affix
19 my Certified Shorthand Reporter seal this 25th day of
20 May, 2012.

21

22

23

PAMELA J. CARLE, LCR, RPR, CRR